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A

SELECTION

OF

PRECEDENTS,

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FROM THE

BEST MODERN MANUSCRIPT COLLECTIONS

AND

Drafts of Actual Practice;

WITH

GENERAL COMMON FORMS AND VARIATIONS

ADAPTED TO ALL THE CIRCUMSTANCES USUALLY OCCURRING;

FORMING A

SYSTEM OF CONVEYANCING;

WITH

DISSERTATIONS, AND PRACTICAL NOTES.

BY THE LATE

W. M. BYTHEWOOD, Esq.

BARRISTER AT LAW.

The Second Edition,

CORRECTED FROM THE LATE EDITOR'S COPY, WITH ADDITIONAL PRECEDENTS AND NOTES,

By THOMAS JARMAN, Esq.

OF THE MIDDLE TEMPLE, BARRISTER AT LAW.

VOL. I.

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PREFACE.

IN presenting the following Work to the Profession, it may appear unnecessary to state, that the greater part of the Precedents were drawn by Counsel of the greatest eminence, because the superior excellence of the generality of the Forms must be manifest to any person in the least acquainted with the subject;—the Precedents, the Variations, and the Notes added by myself, will, I hope, be received with candour. It would have given me pleasure to have inserted, in every instance, the name of the gentleman, by whom each instrument was drawn; but, as many of them are still living, it has been omitted altogether.

The great advantage of this Collection must be evident, because, with a very few exceptions of some short general forms, the precedents were drafts really drawn and used in the course of practice, and consequently may be regarded as the present method of Conveyancing.

I beg leave most respectfully to return my thanks to those Counsel and Solicitors, who have, with a liberality which peculiarly distinguishes Gentlemen of the Law, kindly and spontaneously lent me their extensive Manuscript Collections of Precedents and Drafts of Deeds.

The whole of this Work was originally intended to be published at once, and several heads of it have been for some time entirely perfected; but, in consequence of the determination to publish it in Parts, when little preparation had been made for those heads, which, under the present arrangement, make the commencement, the publication has been unavoidably delayed. However, from the forward state of the manuscript, I have the satisfaction to say, that one of the succeeding Parts will appear about every two months, until the whole be completed.

Occasionally, where it was thought that parts of the Precedents might be omitted, without destroying the efficacy of the deed, they are included within crotchets, thus [ ]; but this rarely happens: the parts within parentheses, thus ( ), are adapted to alternative circumstances.

On searching for any form, the INDEX to the PRECEDENTS should invariably be consulted; because, although the Precedent sought for may not appear in the table of contents as a distinct instrument, yet in almost every instance it will be found as a part

of some other deed; so that a person of common experience may, from this collection, easily draw any instrument in conveyancing.

At the end of the work, it is my intention to supply such information on the Principles and Practice of Conveyancing, as may not have been previously included in the Annotations; and to give extracts from all the statutes in force relative to stamps on deeds, &c. together with the decisions of the Courts of Law and Equity thereon.

From persons, whose profession renders them so competent to appreciate the labour of selecting from many hundred Drafts, and voluminous Manuscript Collections of Precedents, and supplying annotations on such a variety of subjects, I hope for indulgence for any errors I may have committed, because they will be sensible of the difficulties I have had to encounter.

W. M. BYTHEWOOD.

4, *Gray's Inn Square,*
August, 1821.

been given to an abstract of the late salutary Act, introduced into Parliament by Lord Tenterden, making a writing necessary to the validity of certain promises and agreements, and thereby remedying the mischief which had arisen from the encroachments made by judicial determinations upon the provisions of the Statutes of Limitations and Frauds.

THOMAS JARMAN.

6, *Pump Court, Temple,*
29 *Nov.* 1828.

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PRECEDENTS

IN

CONVEYANCING.

ACKNOWLEDGMENT.

ACKNOWLEDGMENT *from a Mortgagee, to a Mortgagor, of the Receipt of* TITLE DEEDS. OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

A SCHEDULE (*a*) of the several deeds and writings this day delivered by [*mortgagor*] to [*mortgagee*], upon the execution of a mortgage of certain lands and hereditaments, situate at —— in the county of ——, for securing the payment by the said [*mortgagor*], his heirs, executors, and administrators, of the sum of —— pounds, and inter- Schedule.

(*a*) When the mortgagor retains a copy of the abstract of title, including an abstract of the mortgage deed, the acknowledgment should be written at the bottom of it. On copy of the abstract.

When the mortgagee executes a counterpart of the mortgage deed, to be left with the mortgagor, the schedule of deeds and writings and the acknowledgment, should be indorsed on the counterpart, and signed by the mortgagee; in which case the title of the schedule may be— On counterpart of mortgage deed.

"A SCHEDULE of the several deeds and writings, delivered to the within-named [*mortgagee*], at the execution of the within-written indenture."

OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

est at five pounds *per centum per annum*, unto the said [*mortgagee*], his executors, administrators, and assigns.

10*th* & 11*th Feb.* 1762.—Indentures of lease and release, between A. B., of &c., of the one part; and C. D., of &c., of the other part.

11*th Feb.* 1762.—Indenture between G. H., of &c., of the first part; the said A. B., of the second part; the said C. D., of the third part; and J. K., of &c., of the fourth part, being an assignment of a term of five hundred years *in trust* to attend the inheritance, &c. &c.

22d March, 1822.—Indenture between the said [*mortgagor*], of the one part; and the said [*mortgagee*], of the other part; being a demise for one thousand years by way of mortgage for securing the payment of the sum of —— pounds and interest at five pounds *per cent. per annum.*

23rd March, 1822.—Indenture between the said [*mortgagor*], of the first part; [*trustee of term*], of &c., of the second part; the said [*mortgagee*], of the third part; and [*new trustee of term*], of &c., of the fourth part; being an assignment of the said term of five hundred years *in trust* for better securing the payment of the said mortgage money and interest.

Acknowledgment.

I HEREBY acknowledge that the several deeds and writings above mentioned, were this day received by me; and I hereby undertake to keep them with the same degree of care as I keep my own deeds and writings, papers, or other valuable effects (*b*); and upon payment of the mortgage

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Bailment.

(*b*) It is now understood, that acceptance of goods to be kept *generally*, is merely an undertaking to keep them as the party receiving keeps his own. Hargr. n. Co. Litt. 89 a, (9). And the notion of Lord Coke, "that *to keep*, and *to keep safely*, are one and the same thing," (Co. Litt. 89 a) was denied to be law by the whole Court, in the time of

money with interest, according to the purport, true intent, and meaning, of the above mentioned indenture of mortgage, I promise and agree to restore and deliver the same deeds and writings unto the said [*mortgagor*], his heirs, or assigns, undefaced and uninjured, (loss or damage by fire and other inevitable accidents only excepted). WITNESS my hand, the —— day of ——, 18—.

OF RECEIPT OF TITLE DEEDS BY MORTGAGEE.

Chief Justice *Holt*. *Coggs* v. *Bernard*, 2 Ld. Raym. 911, 912. A depositary is responsible only for *gross* neglect; or, in other words, for a *violation of good faith:* and a depositary, whose character is known to his depositor, shall not answer for *mere neglect*, if he take *no better care of his own* goods, and *they also* be spoiled or destroyed. If such a deposit of title deeds as the above, without any express stipulation as to the degree of care, be looked upon as a pawn or pledge, a *pawnee* is answerable only for *ordinary* neglect. But all bailees become responsible for losses by *casualty* or *violence, after* their *refusal* to return the things bailed, on a *lawful demand*. Jones on Bailments, 42, 120, 121. Noy's Maxims, 215, 216, 9th ed.

[As to the loss of mortgage or title deeds by a mortgagee, *vide post*, Vol. 4, p. 2.]

ACKNOWLEDGMENT *by two Vendors and the Wife of one of them, of a Deed before the Lord Mayor of London, indorsed thereon previously to enrolment in the Lord Mayor's Court, to bar the Wife of Dower.*

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

BE IT REMEMBERED, that on the —— day of —— 18—, personally came before me [ ] Lord Mayor of the city of London, the within-named [*vendor*] and [ ] his wife, and [*the other vendor*], and did then and there severally own and acknowledge the within-written indenture to be their free and voluntary act and deed: AND the said [*wife*] being by me the said Lord Mayor privately examined apart from her said husband,

Acknowledgment.

Separate examination of wife.

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

did declare her free and voluntary consent to the said deed, and that she had executed the same without fear thereto or force of her said husband, or any other person; and that at the time of the execution thereof, she knew the same to be an absolute conveyance of the estate * within mentioned to the within-named [*purchaser*]: AND the said [*other vendor*] did also acknowledge the name [*his own name*] subscribed to the receipt indorsed upon the said indenture, to be his name and hand-writing, and that he had received the consideration money therein mentioned. IN TESTIMONY whereof, I, the said Lord Mayor, have hereunto subscribed my name, the day and year above written (*a*).

[*4]

Acknowledgment of receipt of consideration money.

Bargain and sale of lands in London to bar dower under the custom.

(*a*) A BARGAIN AND SALE of lands or tenements in London, executed by husband and wife, and *acknowledged* by them before the *Lord Mayor*, or the *Recorder*, and *one Alderman*, the wife being examined separately and apart from her husband, and proclaimed and enrolled in the *Hustings of Pleas of Land*, or *Common Pleas* of the *City*, is as effectual for barring a wife of dower as a fine in the Court of Common Pleas at Westminster, and answers every other purpose of a fine at common law, and consequently is a proper mode of conveying the estate of a married woman. Cru. Dig. 206, 2d ed. Com. Dig. *London*, (N. 3.) Bohun's *Privilegia Londini*, 241, 3d ed. There is not any necessity for a separate bargain and sale, for if the release in fee have the words *bargain and sale*, which is generally the case, it may be used by the parties as a bargain and sale. See Wms. n. 2 Saund. 97 b, (2).

The custom extends to other places.

This custom is not peculiar to London, for by the custom in many other cities and boroughs, a bargain and sale by the husband and wife, where the wife is examined by the mayor or other officer, binds the wife, and those claiming under her, and is equivalent to a fine. 2 Inst. 673. And by the stat. 34 Henry VIII. c. 22, all such customary conveyances shall be of force, notwithstanding the stat. 32 Henry VIII. c. 28. Com. Dig. *Baron and Feme* (G. 4); 1 Rop. Husband and Wife, 139; Hughes on Writs, 119. [As to the effect of the acknowledgment and register of deeds relating to lands in *Antigua*, &c. *vide post*, Vol. 2, p. 218.]

Enrolment of deeds affecting lands in London.

Deeds *conveying* or *affecting* lands or tenements in London, or any interest therein, may be enrolled either in the *Hustings of Pleas of Land*, or *Common Pleas;* the execution thereof being first *acknowledged* before the mayor, or the recorder and one alderman, and proclamation thereof made at one of these courts. Bohun, 241.

Enrolment of

Wills *devising* lands or tenements in the city and liberties of London,

executed and attested as by law is required, for passing real estates, may be enrolled either in the *Hustings of Pleas of Land*, or *Common Pleas*, the same being first *proved* in open court on the oaths of two of the subscribing witnesses thereto, and proclaimed at one of these courts, Bohun, 211; and which, according to Perkins, bind all * manner of persons as strongly as a fine with proclamations; if they do not make their claim unto the same lands or tenements within one year after the proclamations made. Perk. s. 577. *Sed quære; et vide* 32 Hen. 8, c. 2, and 21 Jac. 1, c. 16; 4 Bac. Abr. 462, Gwill. ed. *Limitation of Actions* (B).

OF BARGAIN AND SALE IN LONDON TO BAR DOWER.

wills affecting lands in London.

[*5]

It is observable, that such enrolments may in many cases be attended with the most beneficial effects, as the ill consequences attending accidents which may befal deeds or wills, or the death of the witnesses thereto, are thereby guarded against; and that as the expense attending the enrolment of deeds and wills, and this mode of conveying the estates of married women, and of barring dower being inconsiderable, it renders them matters deserving attention. Emerson on the Courts of Law of the City of London, 25. The fees for enrolling a deed, according to Bohun, 241, are 16*s.* 8*d.*

ACKNOWLEDGMENT *and Approbation of a Purchase by a Judgment Creditor, and Declaration that Purchaser shall enjoy, freed from that Incumbrance.*

AND APPROBATION OF A PURCHASE BY A JUDGMENT CREDITOR.

WHEREAS [*vendor*], of &c., being seised in fee of a messuage, &c. in —— in the county of ——, did by indentures of lease and release, bearing date on or about the —— day of ——, 18—, convey the same with the appurtenances unto and to the use of [*mortgagee*], of &c., his heirs and assigns, by way of mortgage, for securing —— pounds and interest: AND WHEREAS, the said [*vendor*] lately agreed with [*purchaser*], of &c., for the sale to him of the said messuage, &c., for the sum of —— pounds, to be paid to the said [*mortgagee*] in part satisfaction of the sum of —— pounds, due to him for principal, interest, and costs, upon security of the said premises; and in pursuance of that agreement, and in consideration of the said

Recital of mortgage in fee:

of having contracted to sell mortgaged estates, and that purchase money was to be paid to mortgagee in part satisfaction of mortgage money:

APPROBATION OF A PURCHASE BY A JUDGMENT CREDITOR.

of conveyance to purchaser in fee:

of obtaining a judgment against a vendor.

sum of —— pounds, paid by the said [*purchaser*] to the said [*mortgagee*], the said messuage, &c., have by indentures of lease and release, bearing date respectively the —— and —— days of ——, 18—, been conveyed and assured unto and to the use of the said [*purchaser*], his heirs and assigns for ever: AND WHEREAS [*plaintiff*], of &c., did obtain a judgment against the said [*vendor*] in his Majesty's Court of King's Bench at Westminster, as of —— term, in the —— year of the reign of his present Majesty King GEORGE the *Fourth*, for the sum of —— pounds, besides —— pounds and —— shillings for costs; which judgment is in equity an incumbrance upon all the freehold lands and houses which the said [*vendor*], at the time of obtaining the said judgment, was entitled unto; THEREFORE, for the satisfaction of the said [*purchaser*], I the said [*plaintiff*] do hereby declare my approbation of the sale and conveyance to him made as aforesaid; and that I am well satisfied that the sum of —— pounds by him paid to the said [*mortgagee*] for the purchase thereof, is a full and valuable consideration for the same: and I promise and declare, that I, my executors, administrators, or assigns, shall not, nor will, commence or prosecute any action, suit, process, or proceeding, in any court of law or equity, whereby the said [*purchaser*], his heirs, executors, administrators, or assigns, or the said messuage, &c. by him purchased as aforesaid, shall or may be affected or prejudiced in any respect howsoever, by reason or means of the said judgment. WITNESS my hand, the —— day of ——, 18—.

For the satisfaction of purchaser, the judgment creditor declares his approbation of the sale; and covenants not to commence any action or do any thing to prejudice purchaser or the estate purchased.

AFFIDAVIT.

AFFIDAVIT *of the Execution of Deeds.*

OF THE EXECUTION OF DEEDS.

A. B. of &c., maketh oath, that he was present, and did see the indentures hereunto annexed, bearing date, &c. and also one other indenture, bearing date on or about the —— day of —— 18—, and made or expressed to be made between &c.(*a*), sealed and delivered by C. D., of &c., in the said indentures named; and that he, this deponent, subscribed his name to each of the said writings, as a witness to the execution and delivery thereof respectively.

A. B.

SWORN, at ——, in the county of ——, the —— day of ——, 18—, before me,

G. H.
Master Extraordinary in Chancery.

(*a*) If the deed be an appointment requiring signing, say, "signed, sealed, and delivered."

APPOINTMENT.

[AFFIDAVIT *by* EXECUTORS *in order to obtain a Return of* PROBATE DUTY *under stat.* 55 *Geo.* 3, *c.* 184, *s.* 51(*a*).

TO OBTAIN A RETURN OF PROBATE DUTY.

IN THE EXECUTORSHIP of A. B. deceased.

A. C. of &c., and A. D. of &c., make oath and say, That

(*a*) Which provides that where it shall be proved by oath or proper vouchers to the satisfaction of the commissioners of stamps, that an execu-

TO OBTAIN A RETURN OF PROBATE DUTY.

probate of the last will and testament of A. B., late of &c., deceased, was granted to these deponents by the Prerogative Court of the Archbishop of Canterbury, on the —— day of ——; and that the estate and effects of the said deceased, for or in respect of which the said probate was granted, were then sworn to be under the value of 5000*l.*, and a stamp duty of 80*l.* was accordingly paid on the said probate; and these deponents further say, that the Schedule hereunto annexed and subscribed by them, doth contain a true and perfect inventory, account, and valuation of the personal estate and effects, whereof the said deceased was possessed, and for which the said probate was granted by the Court aforesaid, exclusive of what the deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially, and particularly that the said inventory includes all the leasehold estates for terms of years absolute or determinable on a life or lives, whereof the said deceased was possessed; and that such personal estate and effects being now fully got in, do not exceed the amount or value of 4190*l.* 3*s.* 6*d.* according to the best of the knowledge, information, and belief of these deponents; and these deponents further say, that they have actually paid debts due and owing from the deceased at the time of his death, and payable by law out of the personal estate, to the full amount of 1377*l.* 3*s.* 2*d.*, without reckoning or including any interest accrued or become due upon any debt since his death; and that the said sum of 1377*l.* 3*s.* 2*d.*, being deducted from the amount or value

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tor or administrator hath paid debts owing from the deceased, and payable by law out of his or her personal or moveable estate, to such an amount, as being deducted from the amount or value of the estate and effects of the deceased, for or in respect of which a probate or letters of administration, &c. shall have been granted, shall reduce the same to a sum which, if it had been the whole gross amount or value, would have occasioned a less stamp duty to be paid on such probate, &c. than shall have been actually paid thereon; it shall be lawful for the said commissioners to return the difference claimed within three years after the date of such probate, &c.; but where, by reason of any proceeding, the executor or administrator shall be prevented from claiming such return of duty as aforesaid, within the three years, the commissioners of the treasury are authorized to allow further time.

TO OBTAIN A RETURN OF PROBATE DUTY.

of the personal estate of the said deceased, doth reduce the same to the sum of 2813*l.* 0*s.* 4*d.*, which if it had been the whole gross amount or value of the personal estate and effects of the said deceased, would have occasioned a less stamp duty to be paid on the said probate than was actually paid thereon by the sum of 30*l.*, as these deponents have been informed and believe: All which is submitted to the commissioners of stamps, praying that the said sum of 30*l.* may therefore be returned to these deponents pursuant to the act of Parliament in that behalf, and that the same may be paid to Messieurs ——, Proctors, the agents for these deponents, whose receipt shall be a sufficient discharge for the same.

INVENTORY OF DECEASED'S EFFECTS.

Value of effects sworn under 5000*l.*
Probate duty 80*l.*

Cash at the bankers'	£167	10	2
Cash in the house	12	10	0
Ditto in the hands of A. Z.	40	0	0
Rents of freehold estates	108	2	4
Moneys due on mortgage	300	0	0
Household goods & furniture, as *per* valuation	27	11	0
Plate, linen, and china, ditto.	30	10	0
Books and pictures, ditto	50	0	0
Wearing apparel, ditto	6	0	0
Ornaments of person, ditto	4	0	0
4200*l.* 3 *per cent.* Consols at 82*l.*	3444	0	0
	£4190	3	6

SCHEDULE OF DEBTS due and owing from the deceased at the time of his death, and actually paid.

[*Landlord*] for rent	£27	10	0			
[*Servant*] for wages	9	10	0			
Messieurs ——, taylors	14	3	2			
—— surgeon and apothecary	14	0	0			
T. P. on bond	1312	0	0	1377	3	2
Balance				£2813	0	4

[*Executor's Signature*].

For other forms of Affidavits, *Vide post*, Vol. 5, pp. 145, 151, 220, 230, and Index, tit. AFFIDAVIT.

AGREEMENT.

FOR LETTING OF FURNISHED LODGINGS OR A FURNISHED HOUSE.

AGREEMENT *for the letting of Furnished* LODGINGS, *or a* FURNISHED HOUSE.

Parties.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—, BETWEEN [*landlord*], of &c., of the one part; and [*tenant*], of &c., of the other part.

Agreement.

FIRST, the said [*landlord*] for himself, his heirs, executors, and administrators, lets, and the said [*tenant*] for himself, his heirs, executors, and administrators, agrees

Parcels;

to take, ALL THAT (*a*) the ground-floor and the two front attics, with the back coal-cellar, of the dwelling-house of the said [*landlord*], situate in —— street, in the parish of ——, &c. together with the use of the front kitchen and the back yard, with the appurtenances, in common with the occupier for the time being of the other part of

with furniture &c. in schedule.

the said dwelling-house (*b*); together with the fixtures, furniture, utensils, and things, particularly mentioned in

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(*a*) If the agreement be for a ready furnished house, &c. say,

FURNISHED HOUSE.

"ALL THAT messuage or dwelling-house, with the coach-house, stable, out-houses, and garden behind the same, with the appurtenances, situate in —— street, in the parish of ——, in the said county of ——, and late in the occupation of ——; together with the fixtures &c.

(*b*) If it be the agreement, add,

For a surgeon &c. liberty to

"*and* the liberty of putting the name and profession of the

the schedule hereunder written, For (*a*) the term of —— months, commencing from the —— day of —— now next; At the rent of —— pounds for every calendar month, to be paid at the end of every such month, and the first payment thereof to be made on the —— day of —— now next; And the said parties do hereby further agree, that the said [*tenant*] shall and may, from and after the expiration of the said term of —— months, hold and enjoy the said ground-floor, rooms, furniture, and premises from [*six*] months to [*six*] months at the said rent, until one of the said parties shall give unto the other, in writing, —— calendar months' notice to quit; at the end of which said term of —— months, or the expiration of any such notice as aforesaid, the said [*tenant*] shall and will leave the said premises and the said fixtures, furniture, utensils, and things, in as good state and condition as the same now are, reasonable wear and tear excepted; *and also*, shall and will replace such part of the glass, china, and earthenware as shall be broken, with other articles of the same pattern and equal value; *and* that the said [*landlord*] shall during the said term or time keep the said premises and furniture in good repair and condition, and replace such part of the said fixtures and furniture as shall by reasonable wear and tear be rendered unfit for use (*b*). As witness their hands.

FOR LETTING OF FURNISHED LODGINGS OR A FURNISHED HOUSE.

Term.
Rent.

Tenant to hold for a like term, until notice by one of the parties.

After notice, tenant to quit and leave the furniture, &c. in good condition,

and to replace broken glass, &c.

Landlord to repair premises and furniture.

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said [*lessee*] on the front door of the said dwelling-house, in such characters, manner, and form as he shall think proper; *and also*, to place and fix a bell with wires extending to either of the said front attics, with the words 'night bell' to be affixed near the handle, on the outside of the door of the said dwelling-house;"

put name on door, and to fix a bell.

BY THE WEEK.

(*a*) If by the week, say,

"for —— weeks, to commence from the —— day of —— now next, at —— pounds *per* week, to be paid weekly;

(*b*) Sometimes in agreements for ready furnished lodgings, or a ready furnished house, the following is inserted—

"And it is also agreed, that the [*landlord*] shall have power to distrain for the said rent upon any of the goods

FOR LETTING OF FURNISHED LODGINGS OR A FURNISHED HOUSE.

THE SCHEDULE to which the above (*or* within) written agreement refers.

Schedule.

and chattels of the said [*tenant*], as often as the rent shall be —— days in arrear."

Landlord may distrain the goods of tenant of ready furnished lodgings.

But this clause seems to be perfectly useless, as a landlord may distrain the goods of a tenant of ready furnished lodgings for rent in arrear. *Newman* v. *Anderton*, 2 New Rep. 224; and indeed it seems strange how it could ever have been conceived that the remedy by distress should be lost on account of the value of the property being enhanced by the addition of a looking-glass or some other such personal chattels. In London and other towns, it scarcely ever happens that any house is let without some goods being let with it, but only one rent is reserved; and with a brew-house it is common to let the utensils; but it never was doubted that the landlord might distrain for the rent. *Vide Spencer's* case, 5 Co. 17 a. 3.

FOR A LEASE OF HOUSE AND FURNITURE.

AGREEMENT *for a* LEASE *or* UNDER-LEASE *of a Private House, with, or without the Furniture; or of a Public House* (1).

Parties.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—, BETWEEN [*lessor*], of &c., of the one part; and [*lessee*], of &c., of the other part.

Agreement to lease.

FIRST, the said [*lessor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*lessee*], his executors, and administrators,

[(1) As to the impolicy of letting tenants into possession under agreements of this nature, *vide post*, Vol. 4, p. 331. As soon as the terms are settled, and before the tenant enters, a lease should be executed, which, if the property is small, may be deposited in the hands of a third person, to avoid the expense of a counterpart.]

FOR A LEASE OF HOUSE AND FURNITURE.

that he, the said [*lessor*], his (*a*) heirs or assigns, shall and will, within the space of —— months now next ensuing, or when thereunto required by the said [*lessee*], his executors, or administrators, well and effectually, by indenture, demise and lease unto the said [*lessee*], his executors and administrators, ALL THAT messuage, tenement, or dwelling-house, with the coach-house, stables, and garden behind the same, situate, &c. with the appurtenances thereunto respectively belonging (*b*), TO HOLD the same unto the said [*lessee*], his executors and administrators henceforth (*or* from the —— *day of —— now next) for the term of —— years, AT the yearly rent of —— pounds, to be payable quarterly, clear of all taxes, rates, and assessments whatsoever, except the land-tax, the first payment thereof to be made on the —— day of —— now next. AND IT IS HEREBY AGREED by and between the said parties hereto, that in such indenture of lease there shall be contained covenants on the part and behalf of the said [*lessee*], his heirs, executors, and administrators, to pay the said yearly rent accordingly; *and also*, to bear and pay the rates or assessments which shall be made in respect of the said premises, during the said term, for cleansing and keeping in repair the common sewer or drain for carrying off the water in —— Street (*or* parish) aforesaid; *and also*, to keep the messuage, tenement or dwelling-house, and premises, intended to be leased (*c*) during the said term, in as good

Parcels.

Term.

[*11]

Rent.

Covenants by the lessee.

To pay rent.

To pay sewer's rate.

To repair.

(*a*) If the lessor has only a term for years in the premises, say, UNDER-LEASE.

"his executors, administrators, or assigns,"

(*b*) If furniture be leased with the house, say, FURNITURE.

"*together* also with the use of all and singular the furniture, in and belonging to the said messuage, tenement, or dwelling-house mentioned and comprised in the schedule or inventory hereunder written (*or* hereon indorsed, (*or* hereunto annexed), and signed by the said parties hereto,"

Reference to schedule.

(*c*) If furniture be leased with the house, say, Furniture.

"*and also*, the furniture mentioned and comprised in the schedule or inventory hereunto annexed (reasonable wear and tear excepted),"

FOR A LEASE OF HOUSE AND FURNITURE.

plight and condition as the same are now in, and so deliver up the same, together with the several fixtures to the premises belonging, at the end or other sooner termination of the said term, reasonable use and wearing thereof only excepted; *and also*, not at any time or times during the said term to remove, or cause or suffer to be removed from or out of the said messuage, tenement, dwelling-house, and premises, any of the said (*d*) fixtures on any account whatsoever; *and also*, not to assign lease, or underlet the said premises, or any part thereof, to any person or persons whomsoever, without the consent of the said [*lessor*], his heirs or assigns, first had and obtained in writing for *that purpose (*e*); or use, or exercise, or permit, or suffer any person whomsoever, to carry on or exercise the trade or business of a tavern-keeper, victualler, retailer of spirituous liquors, eating-house, oyster-shop, retailer of prepared coffee, tea, and other provisions, commonly called a coffee shop, butcher, currier, soap boiler, common brewer, distiller, tallow-chandler, tallow melter, sugar baker, working brazier, tinman, plumber, tripe boiler or seller, dyer, smith, farrier, pipe maker or burner, caricature, print, or newspaper shop, or any other noisome or offensive trade or business whatsoever, in or upon the said premises intended

To deliver up at end of term.

Not to remove fixtures.

Not to assign lease, or underlet without consent.

[*12]

Not to exercise offensive trades.

Not to remove furniture.

(*d*) " furniture or"

(*e*) If it be a *lease of a public house* by a brewer, substitute in the room of the succeeding provision, the following:

LEASE OF A PUBLIC HOUSE.

" *and* not to permit or suffer the said dwelling-house to be converted into a private house or shop, without the consent, in writing, of the said [*lessor*], his heirs or assigns; *and* to keep, conduct, and manage the said house in such orderly, proper, and regular manner, that the license or certificate of the magistrates may not be taken away or refused to be renewed; *and also*, to take, have, and purchase from the said [*lessor*], his heirs or assigns, and from no other person, all the table-beer, porter, beer, ale, wine, brandy, rum, gin, shrub, and all other liquors and cordials which the said [*lessee*], his executors, administrators, or assigns shall sell in or upon the said premises:" *

Not to be made a private house.

To keep orderly house.

To purchase beer, spirits, &c. of lessor.

[* As to these clauses, *vide post*, Vol. 5, p. 87; also Vol. 4, p. 460.]

to be demised, or any part thereof; *and also*, a proviso for re-entry on the premises on non-payment of the said yearly rent by the space of twenty-one days next after the same shall become due, (or on non-performance of any of the covenants to be contained in the said lease, on the lessee's part to be performed) (*f*); *and* *all (*g*) other usual and reasonable covenants; and that there shall also be contained in the said lease a covenant on the part of the said [*lessor*], his heirs, executors, and administrators, for quiet enjoyment of the said premises by the said [*lessee*], his executors and administrators, during the said term, upon payment of the said yearly rent, and performance and observance of the covenants to be contained in such lease on his or their parts to be performed and kept (*h*). AND THE

FOR A LEASE OF HOUSE AND FURNITURE.

Power of re-entry,

[*13]

and other usual covenants.

Lessor to covenant for quiet enjoyment.

Lessee covenants to accept lease,

(*f*) If the agreement be that the rent shall be suspended or abated in case of fire, &c. say,

Rent to be suspended or abated in case of fire, &c.

"*and also*, a proviso for the suspension or abatement of the said rent during such time as the said premises, or any part thereof, shall remain useless, by reason of fire, storm, or tempest, the same to be referred to arbitration, or arbitration and umpirage, if any dispute should arise respecting the time or proportion of such suspension or abatement; *and also*, a covenant on the part of the [*lessor*], his heirs or assigns, to rebuild or repair, in a proper and workmanlike manner, as soon as conveniently may be, such part of the said premises as shall be damaged or destroyed by fire, storm, or tempest: *and it is also agreed*, that if the said premises shall be destroyed, damaged, or injured by fire, or otherwise, before the commencement of the said term, this agreement shall nevertheless continue in force, and be carried into execution in the same manner as if such event had not taken place;"

Lessor to rebuild in case of fire, &c.

Agreement to continue in force notwithstanding fire, &c. before commencement of term.

(*g*) If the lessor has only a term for years, say,

UNDERLEASE.

"such other covenants (except the covenant for building) as are contained on the part of the lessee in the indenture of lease whereby the said [*lessor*] holds the said premises; *and also*, all"

Such covenants as are in original lease.

(*h*) If it be for a *lease of a public house*, add

LEASE OF A PUBLIC HOUSE.

"*and also*, a covenant, that the said [*lessor*], his heirs or

FOR A LEASE OF HOUSE AND FURNITURE.

SAID [*lessee*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors or administrators, shall and will accept such

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Brewer to provide good beer, &c.

assigns, shall and will during the said term, serve, provide, and send unto the said [*lessee*], his executors, administrators, and assigns, such good and palatable table-beer, porter, beer, ale, wine, brandy, rum, gin, shrub, and all other liquors and cordials, at such and the same price and prices, and of such sort, quality, and description, according to the price, as the said [*lessor*], his heirs, or assigns, shall usually and accustomably provide for and deliver to his or their other publicans, customers, or dealers; *and also*, that the said [*lessor*], his heirs or assigns, shall and will, within (*ten*) days after notice for that purpose, remove and take away such of the said malt liquors, wines, spirits, and all other liquors and cordials, as shall be or become unfit for sale or consumption, in consequence of the bad quality thereof, and replace the same with others of a good and vendible quality, and in default thereof, shall forfeit and pay unto the said [*lessee*], his executors, administrators, or assigns, the sum of —— pounds for every such default; *and also*, a proviso that the said [*lessor*], his heirs or assigns, shall not be obliged or compelled to supply the said [*lessee*], his executors, administrators, or assigns, with any of the said malt liquors, wines, spirits, or other liquors or cordials, after such time as the said [*lessee*], his executors, administrators, or assigns, shall have contracted a debt with the said [*lessor*], his heirs or assigns, to the amount of —— pounds, for any such malt liquors, wines, spirits, or other liquors or cordials as aforesaid, until the same debt shall be fully paid and satisfied (or reduced under that amount)."

and change bad beer, &c.

Penalty on default.

Brewer not to be bound to supply beer, &c. while a debt to the amount of £—— is due.

Arbitration clause.

It may be often prudent, in an agreement for a lease of a public house, to add the usual arbitration clause, "in case of any dispute between the lessor and lessee, either as to the quality of the spirits, &c. supplied, or any other matters or things connected with the agreement."—[*Vide* a general arbitration clause, *post*, Vol. 5, p. 64.]

lease as aforesaid, upon the terms and conditions above specified, and execute a counterpart thereof; *and also*, shall and will bear and pay the expense of these presents (and a counterpart hereof), and of such lease and a counterpart thereof, and employ such person as the said [*lessor*], his (*a*) heirs or assigns, shall direct to prepare the same. IN WITNESS, &c.

FOR A LEASE OF A HOUSE AND FURNITURE.

and pay the law charges.

THE SCHEDULE OR INVENTORY above referred to, (*or* to which the within-written agreement refers, (*or* to which the agreement hereto annexed refers).

Schedule.

(*a*) If the lessor has only a term for years in the premises, say, "his executors, administrators, or assigns,"

[15]

AGREEMENT *by the Owner of the Inheritance; or a Tenant in Tail* (*a*)*; or a Tenant for Life, or in Tail under a Power; or a Husband and Wife seised in right of the Wife; or by the Steward or Bailiff of the Lessor for a* LEASE OF A FARM *for twenty-one Years, determinable at the End of the first seven or fourteen Years.*

FOR A LEASE OF A FARM.

ARTICLES OF AGREEMENT made and entered into this —— day of ——, in the year of our Lord

(*a*) By the statute 32 Hen. 8, c. 28, *tenants in tail* are enabled to make leases for three lives or twenty-one years, which will bind their issue, but not the persons in remainder, or the reversioner; and consequently the leases determine on the failure of issue in tail. Co. Litt. 44 a; Kitchen on Courts, 307, 4th Ed. See the difference as to leases under a power, *post*, 20. There are many particulars to be observed to make such

Leases by Tenants in tail.

FOR A LEASE OF A FARM.

——, BETWEEN [*lessor*] (*b*), of &c. (*c*), of the one part; and [*lessee*], of &c., of the other part.

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leases valid, even against the issue in tail, for which see Co. Litt. 44 a & b; 4 Bac. Abr. 30, Gwil. ed. *Leases* (D) 2; [also, *ante*, p. 15; *post*, Vol. 4, p. 326; Vol. 5, p. 105.]

Since the statute *de donis*, the issue is to be considered as a purchaser, and is in, immediately from the donor *per formam doni*. *Sayle* v. *Freeland*, 2 Vent. 350; *Cavendish* v. *Worsley*, Hob. 203; *Powell* v. *Powell*, Prec. Ch. 278; 1 Eq. Ca. Abr. 265, *S. C.* So that, as it seems, no act of tenant in tail shall be carried into execution in a court of equity against the issue, any further than at law; for this would be to repeal the statute *de donis*. *Ross* v. *Ross*, 1 Ch. Ca. 171; *Jenkins* v. *Keymes*, 1 Lev. 239; 1 Treatise of Equity, bk. 1, ch. 4, s. 20, Fonbl. ed. 5th, 301. Although the issue is in the power of tenant in tail by a particular conveyance, that not being perfected, the Court cannot take away the right he derives, not from the tenant in tail but from the author of the estate-tail. *Hinton* v. *Hinton*, 2 Ves. Sen. 634. Therefore, an agreement by a tenant in tail, for a lease or any other conveyance, although binding on him, *Ross* v. *Ross*, 1 Chan. Ca. 171. 1 Lev. 239, S. P., cannot be enforced against his issue, notwithstanding the tenant in tail receives part of the consideration money, and a bill be brought to compel a specific performance, and a decree be pro*nounced accordingly, and he stands out all process against him to a contempt, and then dies without perfecting the agreement; *Powell* v. *Powell*, Prec. Chan. 278; *Coventry's* case, 1 Eq. Ca. Abr. 265 (B) 3. So where tenant in tail sells at a full value, and receives the consideration money, and covenants to levy a fine, and is decreed to do it, but dies in prison, and in contempt for not performing the decree, *Weale* v. *Lower*, cit. 2 Vern. 306, or enters into articles to convey for payment of debts, the heir in tail is not bound. *Herbert* v. *Fream*, 2 Eq. Ca. Abr. 28, pl. 34; 1 Bac. Abr. 105 (d). But if the issue do any act towards carrying the contract or agreement of his ancestor into execution, by which he consents to or confirms it, he will be compelled in equity to perform it. *Ross* v. *Ross*, 1 Chan. Cas. 171. The only way for the ancestor to bind the issue in tail is, by a lease actually executed and made agreeably to the enabling statute, or by levying a fine or suffering a recovery.

[*16]

Equitable tenant in tail.

A distinction was formerly taken between cases where the lands were entailed *de facto*, and those where there was only an agreement to entail, or a mere trust or equitable estate, which courts of equity considered as a creature of their own, and to be governed by their rules, as conscience directed; therefore, if a man, being tenant in tail in equity, had agreed to grant a lease, or bargained and sold his estate, the Court would have decreed such disposition good against the issue, because a trust is not within

FIRST, the said [*lessor*] in consideration of the rents and covenants hereinafter agreed to be paid and performed, FOR A LEASE OF A FARM. Consideration.

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the statute *de donis;* and as the agreement raised an equity against him who made it, they construed their own creature as a fee-simple conditional at the common law, before the statute *de donis*, which became absolute by having issue, Hagr. n. Co. Litt. 19 a (2) & (4), and the donee whereof had thereby the power of alienating it. *North* v. *Champernon*, 2 Chan. Ca. 63, 71; 1 Vern. 13; 1 P. Wms. 91, *S. C. Carpenter* v. *Carpenter*, 1 Vern. 440; *Beverley* v. *Beverley*, 2 Vern. 131; *Bates* v. *Bayley*, 2 Vern. 226; *Sayle* v. *Freeland*, 2 Vent. 350; *Norcliffe* v. *Worsley*, 1 Chan. Ca. 234. 236; *North* v. *Way*, 1 Vern. 14; *Vide* 2 Vern. 133; *Otway* v. *Hudson*, 2 Vern. 583; 1 Pow. Contr. 126; 1 Treat. Equity, 303; 1 Eq. Ca. Abr. 255, pl. 2; 7 Bac. Abr. 185, *Uses* and *Trusts* (M).

However, subsequent determinations have fully settled that an equitable entail can only be barred by a fine or recovery, which will have the same effect on a trust estate tail, as a fine or recovery by a legal tenant in tail would have on a legal estate tail. *Legate* v. *Sewell*, 1 P. Wms. 91; *et vide* 2 Vern. 552; *Harvey* v. *Parker*, 10 Vin. Abr. 266, pl. 6; *Kirkham* v. *Smith*, Ambl. 318; *Radford* v. *Wilson*, 3 Atk. 815; *Boteler* v. *Allington*, 1 Bro. C. C. 72; *Burnaby* v. *Griffin*, 3 Ves. Jun. 266; 1 Cru. Dig. 485, 2d ed; Sug. Vend. 176, 5th ed.; 1 Fonbl. Treat. Equity, 304, 5th ed. And it has been long settled that a com- Equitable fine or recovery.

*mon recovery, suffered by a *cestui que trust* in tail, who is in possession [*17] under the trustees, will effectually bar such estate tail, and all *equitable* remainders, and the equitable reversion depending thereon; although the trustees do not join, or there be no legal tenant to the *præcipe*. *North* v *Champernon*, 2 Chan. Ca. 63. 78; *Marwood* v. *Turner*, 3 P. Wms. 171; Sir *Francis Gerard's* Ca. 1 Eq. Ca. Abr. 393; *North* v. *Way*, 1 Vern. 13; *Robinson* v. *Comyn*, Cas. Temp. Talb. 167, 1 Atk. 473, *S. C.*; 18 Vin. Abr. 207, n. pl. 2; Pigot on Recov. 104; 5 Cru. Dig. 477, s. 9. If there be a previous *cestui que trust* for life, the *cestui que trust* in tail cannot bar the estate tail by a common recovery without the concurrence of the equitable tenant of the freehold, by analogy to the rule at law. *North* v. *Champernon*, 2 Chan. Ca. 64; 3 Bac. Abr. 242. So when the equitable tenant in tail has the immediate reversion in fee, he may acquire the equitable fee simple by a fine; but if there are equitable remainders expectant upon his estate tail, it will be necessary for him to suffer a recovery; but a legal remainder cannot be barred by an equitable recovery. *Robinson* v. *Cuming*, 1 Atk. 473; *Salvin* v. *Thornton*, 1 Bro. C. C. 73, n. 7 Bac. Abr. 242. Ambl. 545. 699. *S. C.*; *Shapland* v. *Smith*, 1 Bro. C. C. 74; *Brydges* v. *Brydges*, 3 Ves. jun. 120; Lord *Grenville* v. *Blyth*, 16 Ves. 224; *Wykham* v. *Wykham*, 18 Ves. 418. *Vide* 1 Collectanea Ju-

FOR A LEASE OF A FARM.

doth hereby for himself, his heirs, executors, administrators, and assigns, covenant and agree with the said

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ridica, 214. To bar legal remainders by a common recovery, there must be a legal tenant to the *præcipe*. 1 Madd. Ch. 454. 2d ed. Where the tenant, against whom the writ in a common recovery is brought, has only an equitable estate of *freehold*, the recovery, suffered upon that equitable freehold, cannot bar a legal estate tail vested in the vouchee, or any legal remainder; for there is no exception to the rule, that a legal remainder cannot be affected by a recovery with an equitable tenant to the *præcipe;* but the converse is not true, for a legal estate in the tenant to the *præcipe* is no objection. *Marwood* v. *Turner*, 3 P. Wms. 171; *Goodrich* v. *Brown*, 2 Freem. 180; 1 Cha. Ca. 49; *Phillips* v. *Bridges*, 3 Ves. Jun. 126. 128; 1 Sand. Uses, 273, 3d ed.

By husband and wife.

(*b*) If by husband and wife seised in right of the wife †, say,

"and —— his wife,"

Steward, &c.

(*c*) If by the steward or bailiff of the lessor, say,

"(*the lessor*) of &c., by [A. B.] of &c., his steward or bailiff lawfully authorized ‡ for this purpose,"

Of legal estate.

† An agreement for a lease by a husband and wife seised in right of the wife, would not be binding on the wife or her heirs, or her issue in tail, because the statute 32 Hen. 8, c. 28, only authorizes "leases;" and if the circumstances required by the statute are not observed, as those leases are innovations upon the common law, and are sanctioned only by that act of Parliament under certain terms and conditions; a court of equity has no jurisdiction to supply the omission. Cowp. 267; *Anon.* 2 Freem. 224; 1 Scho. & Lef. 71; 1 Rop. Husb. and Wife, 95.

Of equitable estate.

So when a married woman is entitled to an equitable freehold interest, not settled to her separate use, it is necessary that she should concur with her husband in levying a fine, in order to pass it, or to enable them to make other leases than the statutes allow husband and wife to make of her legal estates. *Vide* 1 Sand. Uses, 274, 3d ed.

Authority to agent to contract.

‡ Though the contract itself must, by the statute of frauds, be in writing, *an authority* to buy or treat as agent for another, may be good and effectual without any writing. *Walter* v. *Hendon and Cox*, 5 Vin. Abr. 524, pl. 45; *Wedderburne* v. *Carr*, in the Exchequer, T. T. 1775, cited 3 Wooddes. Lect. 427. So Lord *Eldon*, in *Coles* v. *Trecothick*, 9 Ves. Jun. 250, said, it is clearly settled now, that an agent need not be authorized in writing. See *Clinan* v. *Cooke*, 1 Scho. & Lef. 22; *Barry*

[*lessee*], his executors and administrators, that he the said [*lessor*] (*d*), *his* heirs or assigns, shall and will, on or before

FOR A LEASE OF A FARM.

Agreement.

(*d*) If by husband and wife,

"And —— his wife, her"

Husband and wife.

v. Lord *Barrymore*, *Ibid.* 28, cited. It is, however, in all cases, highly desirable that the agent should have a written authority. Where he has merely a parol authority, it must frequently be difficult to prove the existence and extent of it; more especially where the agent is authorized by several trustees, or several persons concerned in interest, it is difficult to prove that they all concurred in giving the same authority to the agent. *Mortlock* v. *Buller*, 10 Ves. 310. In *Daniel* v. *Adams*, Ambl. 495, husband and wife having a joint power to sell an estate of the wife, gave a verbal authority to an agent to sell by auction; he sold by *private contract*, for a greater sum than the *husband* alone had written to him to say he would part with the property for: it was held, that the purchaser could not compel a specific performance. See *Charlewood* v. Duke of *Bedford*, 1 Atk. 497; 5 Vin. Abr. 522, pl. 35; *Wyatt* v. *Allen*, App. No. 9, Sug. Vend. 11. The testimony of the agent will be received with great caution against his signature as agent. If, however, at the time of signing, he make a declaration that he has no authority, his principal will not be bound. *Howard* v. *Braithwaite*, 1 Ves. & Bea. 202. 374. But although an agent is authorized to sell or lease at a particular price, yet it seems that his clerk cannot contract without a special authority or agreement for that purpose; *Coles* v. *Trecothick*, 9 Ves. 234; which, however, need not be in writing. The principal may revoke the authority of the agent at any time before an agreement is executed according to the statute, although the agent has previously agreed *verbally*, to sell, &c. the property: see *Farmer* v. *Robinson*, 2 Camp. 339, n.: and an intended purchaser, &c. may in like manner revoke his authority to his agent to purchase, &c. As to sales by auction, see *Blagden* v. *Bradbear*, 12 Ves. 467; *Mason* v. *Armitage*, 13 Ves. 25; Sug. Vend. 88, 5th ed.; Roberts on Frauds, XIII. 113, n. [And as to the revocation of authorities, *vide post*, Vol. 5, p. 138.]

[*19]

When a person has authority, as attorney, to do any act, he ought to do it in the name of the person who gives the authority; for he appoints the attorney to be in his place, and to represent his person; and therefore the attorney cannot do it in his own name, nor as his proper act, but in the name and as the act of him who gives the authority. *Combes's* case, 9 Co. 76 b. *White* v. *Cuyler*, 6 Durnf. & East, 177; [*Barford* v. *Stukey*, 2 B. & B. 333]; but it is immaterial whether the at-

Attorney should act in the name of his principal.

FOR A LEASE OF A FARM.

the —— day of —— now next (*e*), grant and demise to the said [*lessee*], his executors, administrators, and as-

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Under a power.

(*e*) If by tenant for life, &c. under a power†—

"and by virtue and in exercise of the power contained in his marriage settlement (*or*, his father's will, (*or* in an indenture bearing date on or about the —— day of ——, 18—, and made between, &c.)"

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torney place his own name first or last. Therefore an execution thus, "for J. B. (the principal), M. W. (the attorney), (L. S)." is valid. *Wilks* v. *Back*, 2 East, 142. So where an attorney enters into an agreement on behalf of his principal, the agreement should be made and signed in the name of the principal by him, as attorney: for if an attorney covenant in his *own* name for *himself, his heirs*, &c. he will himself be personally bound, though he be described in the instrument as covenanting for, and on the part of his principal. *Appleton* v. *Binks*, 5 East, 148; *Kendray* v. *Hodgson*, 5 Esp. Ca. 228. See [*Frontin* v. *Small*, 1 Lord Raym. 1418;] Duke of *Norfolk* v. *Worthy*, 1 Camp. N. P. C. 337; *Bowen* v. *Marris*, 2 Taunt. 375. Sug. Vend. 42, 5th ed.

[In a late case where the terms of a lease were as follow—"Agreed &c. between S. (*the attorney*) *for and on behalf of B.* (*the plaintiff*) on the one part, and H. on the other part, as follows, the said *B.* agrees to let, and the said *H.* agrees to take all those messuages," &c.: and the *reddendum* and covenants were expressed to be made to and with and by B., the name of S. never occurring in the lease, after the commencement, until the conclusion, which was as follows: "In witness whereof we have hereunto set our hands and seals the day and year above written. *S.* (L. S). *H.* (L. S)." It was admitted on all hands, that the deed being executed by S. *in his own name*, B. could not maintain an action on it. *Berkeley* v. *Hardy*, 8 Dowl. & Ryl. 102; *S. C.* 5 Barn. & Cress. 355. (See further as to the acts of persons under a delegated authority, *post*, Vol. 5, p. 138).]

At law a power cannot be executed by attorney.

Where a man has only a particular power or authority to make leases for life or years, he cannot make leases by force of his power by letter of attorney, because he has only a particular power which is personal to him; Lady *Gresham's* case, cited 9 Co. 76 a. *Combes's* case. *Delegatus non potest delegare*, 1 Bac. Abr. 320, Gwil. ed. *Authority* (*e*); although perhaps in equity, for the reasons stated in the note (†) *infra*, an agreement for a lease entered into by the authorized agent of a person having only a power to make leases would be binding on the remainder-man; but of course it would be good as against the donee of the power for his time.

Cases in which

† Under a *power* of leasing, a binding *contract* for a lease may be en-

signs, a valid lease in the law of ALL THOSE &c., which said premises are more particularly mentioned and described in the schedule to these presents, TO HOLD such part of the tillage ground as is now in wheat or wheat stubble, from the 13*th* day of *February* now next; the pasture ground from the 5*th* day of *April* next, and the residue of the said pre-*mises from the 12*th* day of *May* next, for the term of twenty-one years from the said days respectively, determinable by either party (*or* by the lessee) at the end of the first seven or fourteen years, on giving (*one*) year's previous notice in writing, AT the yearly rent of £ ——; AND AT the additional yearly rent of £ ——, for every acre of meadow or pasture land, which the said [*lessee*], his executors, administrators, or assigns, shall break up or con-

FOR A LEASE OF A FARM.

Parcels.

Term and time of entry.

[*21]

Rent.

Additional Rent.

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tered into; and if a *bonâ fide* contract be entered into, to grant a lease at a future day, it will not be deemed a lease *in futuro* against the remainder-man, if the person agreeing to grant it, live beyond the time limited for its commencement, although he die before it is actually granted; for every contract must necessarily precede the execution of it. *Shannon* v. *Bradstreet*, 1 Scho. & Lef. 52. It is only necessary that the intention to execute a power should appear clearly in writing: whether the donee of the power only covenant to execute it, *Fothergill* v. *Fothergill*, 2 Freem. 257; Lady *Beaufoy's* case, 2 Vern. 465, cited; *Alford* v. *Alford*, 2 P. Wms. 230, cited; *Clifford* v. Lord *Burlington*, 2 Vern. 379, 2 P. Wms. 668; Marchioness of *Blandford* v. Duchess of *Marlborough*, 2 Atk. 542; *Hollingshead* v. *Hollingshead*, 2 P. Wms. 229, cited; *Coventry* v. *Coventry*, Francis's Maxims, last case, 2 P. Wms. 222; Gilb. Eq. Rep. 160; 1 Str. 596; 9 Mod. 12; 10 Mod. 469, dict. *Sargeson* v. *Sealey*, 2 Atk. 412; 4 Cru. Dig. 275, 2d ed.; or by his will desire the remainder-man to make up a deficient jointure estate; *Vernon* v. *Vernon*, Ambl. 1; or merely enter into a contract, not under seal, to execute his power; *Shannon* v. *Bradstreet*, *ubi supra;* or by letters promise to grant an estate which he can only do by an exercise of his power, equity will supply the defect. *Campbell* v. *Leach*, Ambl. 740; App. No. 13, Sug. Pow. 673; Ibid. 353, 589, 2d ed.; *et vide* 4 Cru. Dig. 267, 2d ed.; 1 Madd. Ch. 369, 2d ed.

equity will supply a defective power of leasing.

There is a material distinction between leases by tenant in tail under the 32 Hen. VIII. c. 28, and leases by tenant for life or tenant in tail under a power of leasing contained in a deed, will, or private act of Parliament, because leases under a *power* continue, and are binding, on the remainder-man, or reversioner, notwithstanding the determination of the estate for life or in tail. *vide ante*, p. 15, (*a*).

Leases under a power, bind the remainder-man or reversioner.

FOR A LEASE OF A FARM.

vert into tillage, and so in proportion for less than an acre: the said rents to be paid quarterly (*g*); and the first quarterly payment of the said rent of £ ——, to be made on the —— day of —— now next, and the first quarterly payment of the said additional rent to be made on the first of the said days which shall happen next after such breaking up or converting into tillage, and thence to be respectively continued, free from all taxes, rates, assessments, and deductions whatsoever (the land-tax, and the yearly yent of £——, payable to the lord of the manor only excepted, and which it is hereby agreed shall be paid by the said [*lessor*] his heirs and assigns). *Which* said indenture of lease, and a counterpart thereof, are to be prepared by the solicitor of the said [*lessor*], at the costs and charges of the said [*lessee*]; and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually reserved and contained in leases of farms in the neighbourhood (*h*); *(or,* in the indenture of lease dated the —— day of —— 18—, whereby —— now holds the said farms and lands); *and also* the following covenants on the part of the lessee, his heirs, executors, administrators, and assigns, that is to say, to keep the tillage land of the said premises in due course *of husbandry, without setting potatoes, in larger quantities than for the use of himself and his family; and without sowing any rape seed, mustard seed, or turnip seed, for the purpose of producing such seeds; *and* to keep and preserve the buildings and gates belonging to the said premises, in good and sufficient repair, during the said term *(except* the walls, timbers, and roofs, and except when the said

Lease and counterpart at lessee's expense.

Covenants to be contained in the lease.

[*22] Course of husbandry.

Covenant to keep the premises in good repair.

Last quarter's rent to be paid before expiration of term.

(*g*) " except the last quarter's rent, which it is hereby agreed shall be paid on the *25th* day of *March*, before the expiration of the said term; "

[As to reserving rents in advance, *vide post*, Vol. 4, p. 351; Vol. 5, p. 73.]

(*h*) If by a tenant in tail,

Tenant in tail.

" and such other covenants and clauses, as are required by the statute [32 Hen. 8, c. 28] to make leases valid against the issue in tail; "

buildings shall be damaged by fire, tempests, or other inevitable accidents; in all such excepted cases and particulars the said messuages and buildings to be repaired by the said [*lessor*]; *and* yearly to cleanse and scour sixty roods of hedging in the most necessary parts of the said premises; *and* not to cut, prejudice, or destroy any of the trees, thorns, and quicksets growing in and upon the said premises, except such as shall be necessary for the repairs of the hedges, and those only at seasonable times of the year; *and* to the utmost of his power to preserve the said trees, thorns, and quicksets; *and also* during the said term, with his cattle to eat and consume upon the premises the hay and straw that shall yearly grow thereon; *and* to lay and spread all the manure which, during the said term, shall arise from the said farm, upon the lands and grounds which shall be plowed and had in tillage, in a good and husbandry like manner; *and* to permit and suffer the said [*lessor*] his heirs and assigns, and his and their servants, tenants, and labourers, at the usual times in the spring next before the expiration of the said term, to enter upon the said premises, or any part thereof, for the purpose of preparing the same for husbandry; *and* to insure the buildings on the said premises in the sum of £ ——, in the names of the said [*lessor*] (*a*) and the said [*lessee*], in some or one of the public offices of insurance, in London or Westminster, and to produce the receipts for the same *(here mention the other special covenants); and also* a covenant on the part of the said [*lessee*], his executors (*b*), administ-*trators and assigns, not to assign, underlet, or part with the possession of any part of the said premises (except to a legatee or legatees, executor or executors, who shall take

To cleanse hedging.

Not to cut trees, &c.

To preserve trees, &c.

To consume hay and straw on the estate.

To spread manure.

To permit lessor in the spring of the last year of the term to come upon the estate to prepare lands.

To insure.

Special covenants.

Not to assign or underlet.

(*a*) If by husband and wife—

Husband and wife.

" and —— his wife, her heirs and assigns,"

(*b*) It has been suggested as an experiment to be tried, when particular circumstances of hardship may render it expedient to avoid the operation of this restriction, for the lessee to name certain persons in his will, who may contract to sell, and appoint the purchaser when ascertained, the *executor, quoad* the term. 2 Pres. Conv. 192; *et vide* Shep. Touchs. 144; *Parry* v. *Harbert*, Dyer, 45 b. But there will be an intes-

Scheme to avoid the operation of the restriction against assigning without license.

FOR A LEASE OF A FARM.

the same without giving any valuable consideration, or without any collusion or artifice to evade this provision), unless with the express license of the said [*lessor*] (*c*), his heirs or assigns, in writing, for that purpose (*d*); *and also* *a condition giving a power of re-entry, on the bankruptcy or insolvency of the said [*lessee*], his executors, adminis-

unless with license.

Power of re-entry.

[*24]

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tacy *quoad* the term, until the person is ascertained: Godolphin, O. L. 78; 3 Bac. Abr. 28: and the obstacles to the validity of this contrivance seem insuperable, because it is on the face of it an attempt, by an evasion of the words and spirit of the restriction, to do that by circuity which could not be done immediately; and it cannot be doubted that a landlord would endeavour to take advantage of it as a forfeiture; but if he did not, considerable difficulty would be found in proving both wills, and apportioning the probate duty on each, and paying the legacy duty at the Stamp-office; and a question would probably arise, whether the executor *quoad* the term, would not be liable to the legacy duty; besides, it seems the purchaser could not safely pay the purchase money to the executors of the general will, unless the testator expressly declared that their receipts should be sufficient discharges, which in such a case would be necessary, as the persons beneficially interested might be infants, &c. and incapable of receiving it; besides, the special executor could not assign without license. See *Lloyd* v. *Crispe*, 5 Taunt. 250; *post*, Vol. 4, p. 56. This experiment is not likely to be tried. In Lord *Windsor* and *Burry*, a lease was made to *Burry*, upon condition that he should not assign his term without the assent of Lord *Windsor; Burry* devised his term to his son and wife, and made them his executors: and in that case it was said, that if they had not been executors the condition would have been broken. Dyer, 45 b, n.; see *Knight* v. *Mory*, Cro. Eliz. 60; *Berry* v. *Taunton*, Cro. Eliz. 331; Dyer, 45 b (3). [*Vide post*, Vol. 4, p. 365.]

Husband and Wife.

(*c*) If by husband and wife.

" and —— his wife, her heirs or assigns,"

Proviso against assignment, &c.

(*d*) This should always be mentioned, either affirmatively or negatively, according to the intention of the parties.

Much difference of opinion has existed, whether, under an agreement for a lease with the common and usual covenants, a lessor is entitled to have inserted in the lease a covenant not to assign without license. The greatest modern judges have differed on the subject. Although Lord *Eldon* has determined that an agreement for a lease of a *house* for twenty-one years *with usual covenants*, does not include a covenant against alienation without license; *Church* v. *Brown*, 15 Ves. 258; yet in *Boardman* v.

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trators, or assigns, or on his or their suffering the said lease to be taken in execution, or doing any other act whereby the premises may become assigned or assignable, or on his or their breach or non-performance of any of the covenants, conditions, or agreements to be contained in the same indenture of lease; *but* the said [*lessor*] shall

Lessor not to be required to shew his title.

Mostyn, 6 Ves. 471, he admitted, that if an agreement were to grant a *farm* lease, *with the usual and customary covenants of the neighbourhood*, what such usual and customary covenants are, might be made the subject of inquiry before the Master.

Under these circumstances, and as many persons may not have at hand the works in which all the cases on this subject are reported, a statement of them, with the judgments of the courts, may not be unacceptable.

Cases on the point.

Henderson v. *Hay*, 3 Bro. C. C. 632. Covenant not to assign without license, held not to come within a contract to grant a lease with common and usual covenants.

The plaintiff, being assignee of a lease of a *public-house*, without any covenant restrictive of alienation without license, agreed with the owner of the land for the grant of a lease of the same, with other premises, *upon common and usual covenants*. A lease was accordingly prepared, which the defendant approved, but the defendant's solicitor afterwards inserted a covenant that the plaintiff should not assign without license from the grantor. The plaintiff filed the present bill for a specific performance of the former contract, by the grant of a lease without such restrictive covenants.

Lord *Thurlow*, Chancellor, said, "common and usual covenants must mean *covenants incidental* to the lease. That though the covenant not to assign without license, might be a very usual one, as he believed it was, where a brewer or vintner let a public house, that would not make it a common covenant."

It was referred to the Master, generally, to prepare the lease, without any direction to omit the clause; but with a declaration that the defendant has no right to have a clause inserted, restraining alienation without license. [As to *usual* clauses in the lease of a public-house, *vide post*, Vol. 5, p. 137.]

Morgan v. *Slaughter*, 1 Esp. Ni. Pri. Cas. 8. E.T. 33 Geo. 3. Covenant in a lease not to assign or underlet without leave of the landlord in writing, held to be a fair and usual covenant.

An action of *assumpsit* brought to recover the penalty of 50*l.* for breach of an agreement.

The agreement stated in the declaration was, "That the defendant had agreed to assign to the plaintiff all his interest in a lease of a public-house, *of which thirteen years were unexpired, and his good-will in the trade and business carried on in it, in consideration of 200*l.*; and it was further agreed, that the lease should contain *none but fair and usual covenants;* and each party bound himself to the performance under a penalty of 50*l.*

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The facts of the case were, that the defendant was possessed of such a lease, and for the time mentioned; but not having the lease by him at the time he entered into the agreement stated in the declaration, he had made it part of the agreement, that when the lease came to be assigned, it should be found to contain none but fair and usual covenants.

The breach assigned in the declaration was, "That the lease did contain a certain covenant," viz. "That the lessee should not alien, assign, or under-let the premises or any part of them, without leave of the lessor in writing for that purpose first had and obtained:" and then averred, that this was not a fair and usual covenant, and so that the defendant could not perform his agreement.

The counsel for the defendant insisted, that the covenant was a fair and usual one, adopted in all leases, from the times of which there are any reports, and cited to that effect *Dumpor's* case, 4 Co. 119, where a question arose on [a condition similar to] this very covenant, whether the lessor having once permitted an assignment, had not for ever dispensed† with the covenant [*read* condition, and see *Twynam* v. *Pickard*, 2 Barnw. & Ald. 112]. The plaintiff's counsel relied on *Henderson* v. *Hay*.

Lord *Kenyon* said, he could not entertain a doubt concerning this being a fair and usual covenant. That it was a fair covenant as providing properly for the interest of the party demising; and as to its being a usual one, that it sufficiently appeared to have been a usual one so long since as the case cited by the defendant's counsel, and that he had never seen a lease properly drawn without it. That the plaintiff had therefore no cause of action, as the covenant was a fair and usual one, and the defendant had always been ready to assign the lease, in pursuance of the agreement. His Lordship therefore directed a nonsuit.

Boardman v. *Mostyn*, 6 Ves. 467, 471.

BILL for a specific performance of a parol agreement, partly performed, to grant a lease of a farm for twenty-one years, "with the usual and customary covenants in the neighbourhood." Lord *Eldon* said, the point as to assigning or underletting must be the subject of inquiry as to the usual and customary covenants of the neighbourhood.

Folkingham v. *Croft*, 3 Anstruther, 700. Hil. 36 Geo. 3, on an agreement for a lease "with all usual and reasonable covenants:" a covenant not to

BILL to have a specific performance of an agreement for the lease of a public house at *Leeds*. The agreement was for a lease, "with all *usual and reasonable covenants commonly inserted in leases of the same nature." The plaintiff, the lessee, tendered a lease to be executed by the defendant. The defendant objected to the draught for not containing a covenant, on the part of the lessee, not to assign or underlease without license. By the evidence it appeared, that there was no regular local

[*26]

† As to this doctrine, *vide post*, Vol. 4, pp. 55, 366.

practice upon the subject, it being equally common in such leases to insert or to omit the covenant in dispute.

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Plaintiff's counsel relied on *Henderson* v. *Hay*. Defendant's counsel cited *Morgan* v. *Slaughter*.

underlease or assign held to be implied, where the custom of the place is not generally against it.

The case stood over for judgment from Michaelmas to Hilary Term, when the opinion of the Court was delivered by

Macdonald, Chief Baron.—If this case came before us without any authorities, we should not find much difficulty in deciding upon it; the covenant in question is very old in the practice of the law, being recognised as well known in Lord *Coke's* time; and it is now so generally adopted, that a lease made without such a covenant would be considered by every body as improvidently drawn.

A doubt is, however, introduced by the opposite decisions which have taken place upon the subject. In *Henderson* v. *Hay*, Lord *Thurlow* considers it necessary, by the terms of the agreement, that the covenant inserted should be incidental to the lease, that is to say, that it should be quite of course in such a lease; and his decision finds that this covenant is not incidental. The other case was decided by Lord *Kenyon*, having that decision before him; and therefore, although only a case at *Nisi Prius*, is entitled to great attention.

Upon the whole, we are of opinion, that this covenant, being now so long established in common practice, may fairly be considered as a common and usual covenant to be inserted in leases. The bill must, therefore, be dismissed; but, as the opposite decisions upon the subject raised a case of fair doubt for the plaintiff to bring into Court, he ought not to pay costs.

Bill for a specific performance of an agreement for a lease "with usual covenants." The defendant insisted upon the insertion of a covenant against assigning or underletting without consent, as a usual covenant. Sir *W. Grant*, Master of the Rolls, *June* 2d, 1808.—The general question must be decided in this case, as there are no particular circumstances. Though executors and assigns are not mentioned, whatever interest the plaintiff took he could assign, unless prevented by the covenant. *August* 5th.—The only question in this case is, whether under an agreement for usual covenants, a covenant against assigning without license is to be inserted. There are conflicting authorities upon that point. If it was to be decided for the first time, I should be disposed to agree with the opinion of Lord *Thurlow*, in the case of *Hen*derson* v. *Hay*, that the construction ought to be such covenants as are incidental to the lease; but Lord *Kenyon* having expressed his dissent from that opinion, and the Court of *Exchequer* having upon full consideration over-ruled it, I rather think, the understanding of the profession now is, that this is a usual covenant, and is to be inserted, where there is an agreement for common and

Brown v. *Raban*, 15 Ves. 528.

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usual covenants. The case of *Henderson* v. *Hay* appears by the Register's book to have been ultimately compromised; a petition of re-hearing having been presented by the defendant; and the bill being afterwards by agreement dismissed without costs.

Post, 31.

After this opinion was delivered, the case of *Church* v. *Brown*, then depending before the Lord Chancellor, was decided, after a communication between his Lordship and the Master of the Rolls; upon which it was agreed, that the plaintiff in this case should take a lease without the covenant.

Jones v. *Jones*, 12 Ves. 186. Whether under an agreement for a lease, containing all proper covenants, a covenant against assigning or underletting should be included—*quære.*

Bill brought in 1806 for the specific performance of an agreement made 1761, to grant a lease of several houses, at *several* rents, amounting in the whole to 70*l.* during *three lives*, containing all proper covenants.

The defendant's answer insisted upon the provision, that the lease was to contain all proper covenants, which would, according to the usage of the neighbourhood, restrain the lessee from committing waste, or letting; and would compel the tenant to keep the premises in good, substantial, and tenantable repair; and would have made a reservation of all timber trees, wood and underwood, coal mines, &c. and would have imposed a forfeiture in case of the breach of any of those covenants. The answer farther insisted, that the tenant had permitted and committed waste; that the land had been over-cropped, and managed in a very unhusband-like manner; and the tenant had worked coal and culm, and underlet; and that these acts, according to the usual covenants in leases of lands in the neighbourhood, would have been a forfeiture of the lease, if any had been in existence.

By a farther answer to the amended bill the defendant stated, that in case a lease had been granted, it would have contained a proper covenant, on the part of the lessee, not to assign or underlet without license of the lessor, his heirs and assigns, and a *power* for the lessor, his heirs and assigns, *to re-enter in case of a breach;* and insisted that by underletting and by other acts and omissions, the tenant would have committed a forfeiture.

The defendant went into evidence of the usage of the neighbourhood to insert a covenant against underletting, and of waste committed.

[*28] Sir *W. Grant*, Master of the Rolls.—It is admitted, that this court will never decree the specific performance of an agreement, if it is * clear, that covenants must of necessity be introduced into the instrument to be executed, that the party resisting the performance may immediately take advantage of, to deprive the other of all benefit from that instrument †. But, it ought to appear clearly, that such will be the case: otherwise the proper, and the safest course would be to direct the execution; and then

† *Vide Weatherall* v. *Geering*, 12 Ves. 511.

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allow the other to avail himself, if he can, of any breach of covenant: for that question, whether a covenant has been broken, or not, if there is any doubt of the fact, is more proper for the determination of a Court of law and a jury. We know, that a covenant may, according to the strict letter, be broken, and yet no recovery can be had in any action upon the covenant. Many circumstances enter into the consideration, and may weigh with a jury. Many things amount to a waiver of the covenant, or forfeiture, implied or expressed. Wherever therefore there is the least doubt, whether the covenant has been broken or not, the Court ought not to preclude the inquiry by denying the reliefthat is prayed.

Admitting it to be clear in this case, that there must be a covenant against underletting, and that the defendant must recover for a breach of that covenant, it would be nugatory to decree the execution of a lease. There seems however to be some degree of doubt with reference to each of these questions. I own, notwithstanding the decision in the Court of Exchequer, and the *dictum* of Lord *Kenyon*, I think there is great reason in the opinion of Lord *Thurlow*. The word "proper" admits different senses. There is no covenant almost, which a landlord can propose, that, generally speaking, could be called an improper covenant; for he has a right to let his land upon any terms he may think fit to propose; and there are many covenants, not usual or common, that could not be objected to. But there are many covenants, though proper, that do not naturally flow out of the contract. The contract, *Locatio et Conductio*, does not naturally lead to many covenants, that have now found their way into most leases, and cannot be said to be improper in many of them. But that cannot be the sense with reference to the insertion of this covenant upon the expression in this agreement. It cannot mean these covenants, which would not be unreasonable. It must mean such as are calculated to secure the full effect of the contract.

In the case before Lord *Kenyon* the words were "fair" and "usual"; and it was said, this appeared to be a usual covenant, from the question, that had arisen in old times upon the construction of such a covenant, whether an alienation by license determines the condition. That is not a very good reason to shew, that such a covenant is common in practice. At this day it certainly is. In this instance there is no reference to the usage; the reference is only to the propriety. If that question * had arisen before any decision had been made, subsequent to that of *Henderson* v. *Hay*, I should be much inclined to think with Lord *Thurlow*, that the meaning is incidental covenants, not collateral covenants; which it might be very wise to impose, and to which many tenants would not object; but which ought to be the subject of treaty and separate agreement; not necessarily flowing from the agreement to let and to take. Therefore I am not of opinion decidedly by any means, that the Master must introduce into the lease a covenant against under-letting; and my doubt upon that is a sufficient ground for not decreeing against the plaintiff

Morgan v. *Slaughter*, 1 Esp. N. P. C. 8. *ante*, 24.

Dumpor's case, 4 Co. 119.

[*29]

3 Bro. C. C. 632. *ante*, 24.

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in the first instance. A reference to the Master will leave it open to farther discussion.

Condition against assigning without license, determined by a license once granted.

Dumpor's Case, 4 Co. 119.

(*a*) *Quære*, read condition.

But that is not the only doubt upon this case. It appears, though not clearly, from the answer, that there had been an under-letting in the time of the former proprietor. That I collect, rather than that it was a recent under-letting. This question then arises: whether, supposing such a covenant ought to have been introduced into the lease in 1761, the fact of under-letting, acquiesced under by the landlord, would not amount to a waiver (1); and, whether he could resort to the covenant again. It is determined, that such a covenant (*a*) is at an end by a license once granted. That question will deserve consideration, when the fact is ascertained, what has been the nature of the under-letting, and the conduct of the landlord; whether the covenant has not been waived; and, upon that ground, whether it ought now to be introduced; independent of the other point, whether it ought originally to have been inserted. This is not therefore that clear case of a decree, that would be nugatory, to entitle me to say, no lease ought to be executed, as it would be, if the party could immediately have gone to a Court of law to avail himself of the forfeiture.

Therefore, direct the Master to settle a lease according to the agreement of the 19th June, 1761, without prejudice to the question, whether the plaintiff is entitled to a specific performance of the agreement.

Vere v. *Loveden*, 12 Ves. 179. Whether an agreement for a lease with usual covenants includes a covenant against assigning or underletting without license —*quære*.

In this instance, upon the particular construction of the agreement for the lease of a farm, the words "such other clauses as are usual in such cases," held not to have that effect.

BILL for a specific performance of an agreement for the lease of a *farm* for *three lives*, after specifying many covenants and clauses, added, "and such other *clauses* as are usual in such cases:" the defendant, the landlord, insisted that the covenant against *assigning* or *under-letting* without license was a usual and proper covenant. Sir *William Grant*.—It seems to me, that this case may be determined upon its own ground, without any reference to the general question, which is the subject of those conflicting authorities that have been cited.

In the case of *Jones* v. *Jones*, 12 Ves. 186, *ante*, 26, I expressed the inclination of my opinion upon that general question: but it is not necessary to enter into it upon this occasion. This is not a mere agreement for a lease, with proper and usual covenants, but it is an* agreement which contains in great detail the terms which the lease is to contain; and it seems to me to be drawn with great method and apparent skill. It is to be observed, first, that the lease is to be granted to the plaintiff, "his heirs and assigns," for three lives. I do not say, that necessarily excludes a covenant against assigning without license; but I should require to be clearly satisfied that the intention was to introduce a covenant, to have the effect of preventing any assignment without license of the lessor.

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The agreement proceeds then to state the premises; then the rent; then the exception and reservation out of the lease; then the covenants which

[(1) *Vide post*, Vol. 4, pp. 55, 366.]

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the lease is to contain; declaring that it is agreed, that in the said lease shall be contained covenants by and on the part of the tenant, his heirs, executors, administrators, and "assigns." It then goes on to specify all the covenants usually introduced into leases. When that part is terminated, it then goes on to other matters; declaring, that lastly it is agreed that the lease shall take effect in possession from the making thereof, determinable on the lives aforesaid; and then follows the passage upon which the question arises: "and therein shall be contained a clause of re-entry by the landlord for non-payment of the rents, duties, and services to be therein reserved, or for breach of any of the covenants on the tenant's part therein to be contained, and such other clauses as are usual in such cases."

The connection of these last words is, with the clause of re-entry mentioned immediately before. The construction, therefore, ought unquestionably to be, clauses of the same kind as that with which those words are connected. The agreement had already provided what the covenants should be; it then proceeds to state, what the security shall be: re-entry for breach of any of those covenants; and adds, "such other clauses as are usual in such cases." Then, if there be any clause to give effect to that security, there is a right to such clause. But it cannot be contended, that it was meant here to go back to the subject of the covenants, which they had concluded, and passed from, to a new subject; and this is connected naturally with that new subject; security for the performance of the covenants. It would be a construction against the obvious meaning to say, the parties thought here of such a very material covenant, affecting the whole interest as to which they were bargaining, *viz.* whether the lease should or should not be assignable; and that they conceived, that there was no better way of determining that than under this obscure clause.

This is not within the cases, where the agreement is totally silent as to all the covenants to be contained in the lease, and expresses only that it is to contain the usual covenants. There a fair question arises. What are the usual covenants? The case of *Jones* v. *Jones*, does not *bear upon this; [*31] for there the agreement was only to execute a lease with all proper covenants: none whatever were specified. It was clear, if a bill had been filed immediately, a reference, to determine what the lease ought to be, and what the covenants ought to be, would have been of course. But the defence set up was, that if the lease had been executed, it must have contained certain covenants; and the defendant specified several covenants that must have been contained in it, according to the agreement; every one of which, it was contended, had been broken. The lease, therefore, would have been forfeited, if it had been granted at the date of the agreement. Therefore I had either to direct the reference, or to draw out myself the draft of a lease, in order to see what covenants it would have contained, and then to apply the evidence, to see whether any of those covenants had

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been broken; which I thought was not the business of the Court, but was proper for the Master; and then, the lease being settled, I could apply the evidence, to determine whether the covenants had been broken; in order to guide my judgment upon the point, whether it was fit or not, that the agreement should be performed: and, I think, that was the proper decision. But some words have crept into the decree, making it apparently inconsistent with itself, and repugnant; that the Master should settle a lease, to be executed without prejudice to the question, whether the plaintiff is entitled to a specific performance of the agreement. That undoubtedly was not my intention; which was only, that the Master should prepare such a lease as was fit according to the agreement, leaving the question open, whether the agreement should or should not be executed. There the parties had not come to any point; for the question, what the lease should contain, was entirely open. Here they have come to a point. There is nothing in difference between them but this single covenant.

Therefore, without entering into the consideration, whether the judgment of Lord *Thurlow* was right, or that of the Court of Exchequer, I may in this case do what Lord *Thurlow* did; make a declaration that this particular covenant, insisted on by the defendant, ought not to be introduced into the lease. But this decree must be without costs.

Churchv. Brown, 15 Ves. 258. Under an agreement for a lease, it was held that the lessor is not without express stipulation entitled to a covenant restraining alienation without license, as a proper and usual covenant.

T. W. of C. grocer, entered into an agreement in writing, the 3d of December, 1798, with the plaintiffs, C. and U., to grant them a lease for *twenty-one years*, from Christmas next, of a *house*, warehouse, and other premises in C. at the yearly rent of 40*l.* clear of taxes, except the land-tax; and the plaintiffs agreed to accept the said lease, and to pay the rent; which lease it was agreed should contain a power for the plaintiffs to determine the lease at the expiration of the first *seven or fourteen years, on notice; and the lease was to contain a covenant on the part of W., that *he* should not, at any time within ten years, set up, exercise, or follow, the trade of a tea-dealer or grocer, within four miles from C.; but should, on the contrary, render his assistance to the plaintiffs in the business.

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In pursuance of the agreement, in January, 1799, the plaintiffs entered, and carried on the business of a grocer in the premises, in partnership; until they agreed to dissolve the partnership, that C. should continue the business on his separate account, and the lease should be granted to him alone. W. afterwards sold the premises to B. the defendant, a *grocer*, in C., in fee.

The bill, filed in November, 1803, prayed that the defendant may be decreed to execute a proper lease, conformable to the agreement.

Under a decree, directing the Master to settle a lease, a draft was carried in by each party, varying only in this respect—that the draft proposed by the defendant extended the proviso for re-entry for non-payment of rent, or breach of covenants, to the following case, viz. if C. and U. or either of

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them, their, or either of their executors or administrators, shall assign over this present indenture of lease, or their term or interest therein, or any part thereof, or demise, let, or part with, the demised premises, or any part thereof, to any person or persons whomsoever, without the license of B., his heirs or assigns, in writing, first obtained; or if C. and U. or either of them, &c. should become bankrupt, or make any assignment for the benefit of their or his creditors.

The Master's judgment being against the insertion of that clause, an exception was taken to the report.

Lord *Eldon*, Chancellor.—I came into Court with an extremely strong opinion that this covenant could not be inserted in the lease; but my mind is most seriously affected, on the one hand, by the very strong reasoning of the Master of the Rolls in the two cases that have been mentioned; and, on the other, by the communication, that, notwithstanding that reasoning, the Master of the Rolls considers this point bound down by the decision of Lord *Kenyon*, at *Nisi Prius*, and that single case in the Court of Exchequer.

Vere v. *Lovedeu*; *Jones* v. *Jones*, 12 Ves. 179, 186. *Morgan* v. *Slaughter*, 1 Esp. N. P. Ca. 8. *Folkingham* v. *Croft*, 3 Anstr. 700.

No one will suspect me of not giving all due weight to any opinion of Lord *Kenyon*; but I must know a great deal more than I do, before that determination at *Nisi Prius*, will decide my judgment upon such a point; and, as to the other case, I have not yet had an opportunity of learning any reasons that I can represent as satisfactory to my own mind. The case of *Henderson* v. *Hay* may, as it is said, not be an authority in one sense; but, that it was Lord *Thurlow's* judicial opinion, and would have been his decision, if it had been necessary to decide it, I have no doubt; and I am much misled, if that learned Lord, who was very apt to give his peculiar attention to legal subjects, and after he had decided upon them, ever altered his opinion under the impression of any contrary opinion or reasons that he had received.

3 Bro. C. C. 632.

[*33]

Suppose this point altogether unprejudiced by decision. There are different sorts of landed property, known to the law: land in fee-simple, and leasehold property; I am not at present alluding to copyholds. If a man covenants to sell a fee-simple estate, free from all incumbrances, and says no more, it is clear that covenant carries *in gremio*, and in the bosom of it, the right to proper covenants. Why? Because that sort of engagement has in all times been carried into execution in a form and mode, which alter most materially, substantially, and importantly, the effect of the mere conveyance. If no more is done than the agreement imports, the conveyance contains express covenants: the words, operating warranties and obligations, which it was not understood between the persons contracting, that the one was to undertake, and the other to have the benefit of; and, accordingly, it is perfectly settled by the law, what are the covenants, as applied to the case of a vendor, who was himself a purchaser for valuable consideration, or who took by descent, or by purchase, but not for

Under a general agreement to sell a fee-simple estate, free from incumbrances, the purchaser is entitled to various covenants, according to the nature of the vendor's title.

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valuable consideration; and, though the agreement, if literally executed, would carry all the extensive obligations, to which the legal warranties flowing from the words would bind the vendor and his heirs, yet it cannot be carried into execution without express covenants, substituted for, and limiting the implied covenants. In such a case, the law would determine according to *Henderson* v. *Hay*, what are usual covenants †.

Power of assignment incident to the estate of a lessee, without the word "assigns," unless expressly restrained.

With regard to leasehold estates, I should lay no stress upon the word "assigns;" if the lease was to be made to the lessee, his executors or administrators, his assigns being included in himself, and the right to assign, unless restrained, being incident to his estate. The letter of the agreement, however, would not in any degree determine * the form of the conveyance. The effect of the lease in the warranties and obligations, as arising out of the words of the lessor and lessee, "yielding and paying," and under the execution of their agreement by the Court, is perfectly different; the latter, including the covenant for quiet enjoyment, and in many other respects the mutual obligations of both with reference to each other, being by the express covenants very materially varied. Before the case of *Henderson* v. *Hay*, therefore, upon an agreement to grant a lease, with nothing more than "proper covenants," I should have said they were to be such covenants as were just as well known in such leases as the usual covenants under an agreement to convey an estate: and, though the word "incidental" is not very precise, I conceive Lord *Thurlow's* meaning to have been, that the party had a right to those covenants that would be inserted in the execution of an agreement for a lease, arising out of the general well known practice as to such leases; and not contradicting the incidents of the estate, belonging to a lessee: one of which is the right to have the estate without restraint, beyond what is imposed upon it by operation of law, unless there is an express contract for more.

[*34]

3 Bro. C. C. 632 Execution of an agreement for a lease with proper covenants, viz. according to the general practice as to such leases; and not contradicting the incidents of the lessee's estate; one of which is the right to have it without restraint, except what is imposed by law, unless an express contract for more. 4 Co. 119.

How does the history of the law with reference to this subject stand? There may be a covenant for almost any thing; and this covenant against alienation without license is as old as *Dumpor's* case: but how does the fact, that there was such a covenant in that case, where it was held to be

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Usual covenants on the sale of a fee-simple.

† The usual covenants upon the sale of an estate in fee-simple are, that the vendor is seised, and has power to convey in fee; for quiet enjoyment; that the estate is free from incumbrances; and for farther assurance. The vendor, if he was himself a purchaser for valuable consideration, delivering or covenanting to produce his title deeds, covenants against his own acts only; if his title is by descent, by devise, or otherwise as a purchaser not for valuable consideration, he covenants against the acts of the last purchaser, or, at least, of the person immediately preceding him. See *Lloyd* v. *Griffith*, 3 Atk. 264. *Wakeman* v. The Duchess of *Rutland*, 3 Ves. 233, 504; 8 Bro. Parl. Cas. 145. [See Sugd. Vend. c. 9, s. 4, p. 393].

FOR A LEASE OF A FARM.

gone by alienation with license, prove, that this is a usual general covenant in a lease? The conclusion is rather the other way; that this is a special and particular covenant. Consider how this grows. This covenant, which is represented to be usual, would not prevent under-letting. Then is a covenant against under-letting a usual covenant? and is it proved to be so by the authorities, that it is not restrained by the other covenant? Farther, if the landlord has a covenant against both assigning and under-letting, the tenant might, by an agreement, neither assigning nor under-letting, put another person in possession of the premises; and parting with the possession in that manner would not be a breach of those covenants. Is a farther covenant, therefore, not to part with the possession of the premises, to be given, as a usual covenant? That would not have restrained the tenant from parting with a part of the premises; these covenants having been always construed by Courts of law with the utmost jealousy, to prevent the restraint from going beyond the express stipulation. The Court will have to consider, whether all these covenants are also included under the terms "usual and proper covenants," in the construction of an equitable agreement, where the law would regard the instrument with that jealousy.

Covenant restraining assignment of a lease would not prevent under-letting.

Covenants restraining lessee from alienation without license, construed with jealousy.

*Independent therefore of the authorities, I should have said, that the meaning of the parties to a contract for a lease was, that there should be proper covenants; and that the law implies what they are, as connected with the character and title of the lessor: covenants in this sense incidental, as regulating the obligations expressed and implied; not in contradiction to the quantity of interest, which the demise itself, without special words, was by the agreement to give to the lessee. The case of *Henderson* v. *Hay*, in its circumstances, shews what reliance is to be placed upon this word "usual." The assignee of the lease of a public house, which lease contained no covenant restraining alienation without license, contracted for a lease, not only of the public house, but of other premises also. It was a case therefore, in which, not only the original lessor had no idea of such a covenant, but it could not relate to the public house only; and it was as fair to argue, from the nature of the other premises, which were part of the subject of the demise, as from the nature of the public house. Lord *Thurlow*, however, conceived, that this agreement to demise such an interest upon common and usual covenants, meant only, that an agreement to give an interest for twenty-one years in equity, gave it to the party, his executors, administrators, and assigns; and that the covenants were to be such as would not break down the extent of that interest contracted for.

[*35]

Proper covenants implied in an agreement for a lease; as connected with the character and title of the lessor.
3 Bro. C. C. 632.

In the case before Lord *Kenyon*, the agreement was for fair and usual covenants; but before the case of *Henderson* v. *Hay*, there is no one instance, that such a covenant as this was conceived to fall within the description of usual covenants. *Dumpor's* case proves no more than the

Morgan v. *Slaughter*, 1 Esp. N. P. Ca. 8.

4 Co. 119.

FOR A LEASE OF A FARM.

fact, that there was in that instance such a covenant; not, that it is a usual covenant, and on that account to be inserted in all leases. I am perfectly unable to follow that sort of reasoning. The inference from that case appears to me to be rather the other way. It is said, no lease is properly drawn without this covenant. I have seen many leases without it, and lately scarcely one with it. Such leases as fall within our observation, individually, as lessees, have no such covenant. They have a covenant of another sort. A lease is properly drawn with or without such a covenant, according to the agreement; and the lessor must shew that the restraint is to be put upon the powers, which by law flow out of the interest that he has agreed to give to the other party.

3 Anstr. 700.

The case of *Folkingham* v. *Croft* was upon an agreement for a lease "with all usual and reasonable covenants, commonly inserted in leases of the same nature." Some construction must be given to those latter words. The explanation with reference to the peculiar property,

[*36]

*which was the subject of that demise, is a most dangerous proceeding; but it is stated as a fact in that case, that there was no regular local practice upon the subject; it being equally common in such leases to insert or omit the covenant. The plaintiff therefore failed upon the ground of local usage; and, though I say that I should not have had much difficulty in deciding that case, if it had come before me without any authorities, I fear that would have been because my opinion is directly contrary to that decision.

As this case also cannot be decided upon any usage locally, I must look to general usage; and, if I could see a usage with reference to the peculiar subject of this demise, authorizing the insertion of this covenant, I might say, the party had contracted for it; but no such fact is made out. Can it be maintained upon a common agreement for a lease, as the meaning of the parties, that the lessee is not to make a sub-demise to part with the possession; in short, that he is to be subject to all these restraints upon the power of alienation, flowing out of the equitable estate, if nothing is said about it; and that under the words "usual covenants," all such restraints are to be inserted? With respect to another species of covenant, it is now held, that, to avoid the consequences of bankruptcy, a landlord may take a clause, that the lease shall determine upon the bankruptcy of the tenant; and many prudent men take that clause. Is that also to be inserted as a usual and common covenant; and why not, if the fact, that such a covenant as this occurred in *Dumpor's* case, makes it a proper and usual one?

Covenant that a lease shall determine upon the bankruptcy of the tenant.

4 Co. 119.

Vere v. *Loveden*, *Jones* v. *Jones*, 12 Ves. 179, 186.

I do not go through the reasoning of the Master of the Rolls in the two late cases. It will be a satisfaction to me to learn from him, how, rather than rest upon that reasoning which his great mind then suggested, he can bend to that, which appears to me very unsatisfactory, in those previous cases. My opinion, that if decision has not closed this point,

FOR A LEASE OF A FARM.

the grantor has no right to this covenant, is formed upon grounds, that make me lay out of consideration the small reasoning upon the word "assigns;" and the circumstance, that the lessor might at the end of ten years return to his trade in this shop. The safest rule for property is, that a person shall be taken to grant the interest in an estate which he proposes to convey, or the lease he proposes to make, and that nothing which flows out of that interest, as an incident, is to be done away by loose expressions, to be construed by facts more loose; that it is upon the party who has forborne to insert a covenant for his own benefit, to shew his title to it; and that it is safer to require the lessor to protect himself by express stipulation, than for courts of equity to hold, that contracting parties shall insert, not restraints expressed by the contract or implied by law, but such, more or *less in number, as individual conveyancers shall [*37] from day to day prescribe as proper to be imposed upon the lessee; and that all those restraints, so imposed from time to time, are to be introduced as the aggregate of the agreement.

In the case of *Boardman* v. *Mostyn*, the parties compelled the Court to inquire as to the usage in the neighbourhood, to be enforced, not as being usual in the proper sense, but as that to which it appeared they looked. So, upon many estates the expression is familiar, "such covenants as are usual;" as in the leases granted by the Duke of *Bedford* and Lord *Grosvenor*. The lessee may either desire to be informed what are the covenants usually inserted in their leases, or may not inquire about them; concluding that, being submitted to by the tenants, they are reasonable. In many of those leases it is not thought reasonable that the restraint of alienation should be during the whole term; but it is only for the last seven years of a term, perhaps of sixty or seventy years. Whether that should be applied to a term of twenty-one years, is another consideration. 6 Ves. 467.

Is it then to depend upon the nature of the property? Is an agreement for the lease of a public house, where nothing more is expressed, to be carried into execution in a different manner from an agreement as to property of another species; with regard to which, though there may not be the same reason, the landlord may have reasons operating just as powerfully, for requiring the restraint? The proposition would appear extraordinary, as to an agreement for the lease of a public house, that the tenant was to have a more extensive interest before a license was necessary, than he would now be entitled to in the execution of such a contract; that on account of the alteration of the general law in that respect a different decision is to be made upon the same words.

Upon the whole, I came into Court with a firm opinion, that the best, that is, the most legal, decision of this case would be, that the Master is right in rejecting this covenant; but the case of *Browne* v. *Raban* having been decided yesterday, an authority of such great weight, I will discuss

FOR A LEASE OF A FARM.

the subject with the Master of the Rolls, before I decide this case. There is a specialty here, that this agreement does specify some covenants, that the lease is to contain, and has no reference to the general expression, "usual and proper covenants;" but there is very little difference, whether those words are found in it or not, with reference to the ground of my opinion; which is, that, where the interest to be demised carries with it the power of alienation, it can be shut out only by express contract; and the proper and usual covenants must be such as would be inserted in a lease, giving the power of alienation for twenty-one years.

[*38]

Aug. 8.

*The Lord Chancellor.—I have not had an opportunity of consulting the Master of the Rolls, who has been out of town; but I understand that the words "with usual covenants" were relied on in the judgment at the *Rolls*. I am extremely anxious not to give my final judgment upon this case, until I know what is the value which the Master of the Rolls sets upon that distinction. The principle upon which my opinion rests is, that, before the case of *Henderson* v. *Hay*, there was no sort of difference whether the agreement in the terms of it did or did not refer to usual and proper covenants; that in every agreement, whether as to freehold or leasehold estate, it was implied, that there were to be usual and proper covenants. It will be a great relief to me if it should appear, that the decision of that case did not rest upon that distinction; of which, after repeated consideration, I cannot state the actual value; nor, looking back to the cases, can I state what is the result of them.

3 Bro. C. C. 632.

Aug. 9.

The Lord Chancellor.—I have examined the Register's book†, as to the case of *Henderson* v. *Hay*, with the view to ascertain whether it is to be considered merely as the opinion, or as the judgment of Lord *Thurlow*. The cause came on upon the objection to the clause, which was proposed, as it is stated in the report; and it was declared, that the defendant has not any right to insist upon the clause to restrain the alienation of the premises being inserted in such lease; reserving the consideration of costs. It is therefore a declaration in judgment upon the very point.

I have had sufficient communication with the Master of the Rolls for this purpose. The law of this Court is unquestionably as Lord *Thurlow* there declared it; and I conceived it to have remained undoubted until the case before Lord *Kenyon*, which cannot justly be considered merely as a decision, as his Lordship was eminently skilled in the doctrine of this Court, and could not have been ignorant of the case of

Morgan v. *Slaughter*, 1 Esp. N. P. Ca. 8.

† Reg. Book, 1791. A. Fol. 337. That case was in the argument considered as having ended in a compromise, from the observation of the Master of the Rolls, in *Browne* v. *Raban*, that a petition of re-hearing was presented by the defendant, and the bill was afterwards by agreement dismissed without costs; which appeared by the Register's book.

*not be required to shew his title to grant the said lease (*e*): AND THE SAID [*lessor*] for himself, his heirs, executors, and administrators, doth hereby agree, that the said [*lessee*], his executors, administrators, and assigns, shall and may, in the harvest next after the expiration of the said term, have and take a way-going crop of wheat or hard corn off one third part of the land then in tillage, as the same shall fall in due course of husbandry, so as that he thresh the same in the barn of the said premises before the *(thirteenth)* day of *(February)* then next; and leave the straw of such way-going crop, and the manure to be produced

FOR A LEASE OF A FARM.

Tenant to have a way-going crop.

Henderson v. *Hay*. I therefore say with reluctance, that the reasoning upon which Lord *Kenyon* determined that case, does not satisfy me that it is the law. When the point was before the Court of Exchequer, it does not appear that the Court found it easy so to state the law, as they deliberated upon it a considerable time. With respect to that case I can only say, that my mind is not by any means satisfied with the reasoning. I have read the two cases before the Master of the Rolls, which are in print; and certainly it would be very difficult to answer the reasoning that appears in those judgments. I have stated the grounds of my own opinion upon this point, and I understand the Master of the Rolls still considers *that* the better opinion; but, the case in the Court of Exchequer having been so decided, he thought it difficult to depart from it. With reference to that, however, it seems to me, that Lord *Thurlow's* authority, in 1791, was not treated with all the respect that is due to it, in the subsequent period; and the existence of these four cases in controversy, three at the Rolls, and this one before me, is decisive evidence, that the point was not set at rest by the case in the Court of Exchequer. The Master of the Rolls also agrees with me, that, whether the agreement contained the clause, that usual covenants should be inserted, or not, would not make a material difference; and, with great anxiety to be right upon this point, I never will consent, that my opinion shall be supposed to stand upon such a distinction. Before the case of *Henderson* v. *Hay*, an agreement for a lease would have been executed precisely in the same mode, as to the covenants to be inserted, whether that clause had been contained in it, or not; so would an agreement for the conveyance of a real estate. In this case therefore I must act upon my clear opinion of what the law is; which is, that the lessor is not entitled to such a covenant.

Folkingham v. *Croft*, 3 Anstr. 700.

Vere v. *Loveden*, *Jones* v. *Jones*, 12 Ves. 179, 186.

The exception was accordingly over-ruled.

(*e*) See note (*h*), *post*, 47.

FOR A LEASE OF A FARM.

in the winter and spring next before the expiration of the said term, for the use of the said [*lessor*], his heirs or assigns; *and* pay to the said [*lessor*], or his next succeeding tenant, upon demand, *(two)* pounds an acre for such way-going crop, and so in proportion for any greater or lesser quantity than an *acre: AND THE SAID [*lessee*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*] (*f*), his heirs and assigns, that he the said [*lessee*], his executors or administrators, shall and will accept such lease, on the terms and conditions aforesaid; and execute a counterpart thereof when required; and pay the charges for the same when prepared, as well as the charges for these presents (and a duplicate hereof). IN WITNESS, &c. (*g*).

[*40]

Covenant by lessee to accept lease, execute counterpart, and pay law charges.

(*f*) If by husband and wife seised in right of the wife, say,

"and —— his wife, her heirs and assigns;"

Execution by steward, &c.

(*g*) If executed by a steward or bailiff, say,

"IN WITNESS whereof, the said [*lessor*], by the said [*steward, &c.*] as his attorney lawfully authorized for this purpose, and the said [*lessee*] himself, have hereto set their hands."

[A. B. the lessor]
by
[C. D. the steward, &c.]
[E. F. the lessee].

Sometimes it may be advisable for the lessor to approve the agreement, thus:

APPROBATION OF AN AGREEMENT MADE BY AN AGENT.

"I hereby declare my approbation of the within (*or* above) written agreement; (*or*, if on a separate paper, the agreement made between my agent A. B. and C. D., bearing date the —— day of ———, 18—;) and do hereby agree to grant the lease, upon the terms therein mentioned. WITNESS my hand, the —— day of ———, 18—."

AGREEMENT *for a* BUILDING LEASE *of Freehold or Copyhold* (*a*) *Premises, in which a Surety for the Lessee joins.*

FOR A BUILDING LEASE, WITH A SURETY FOR THE LESSEE.

ARTICLES OF AGREEMENT made and entered into this —— day of ——, in the year of our Lord 18—, BETWEEN [*lessor*] of &c., of the first part, and [*lessee*] of &c., of the second part, and [*surety*] of &c., of the third part.

Parties.

(*a*) The statute 32 Hen. VIII. c. 28, relative to leases by tenants in tail, or persons seised in right of their wives, or churches, does not extend to copyhold estates. Gilb. Ten. 179, 185. The late ingenious Mr. Watkins adds, by way of explanation, (*i. e.* as I conceive), so as to authorize a lease without license or custom. But if the custom warrant a lease for twenty-one years, or a license be obtained for that period, I apprehend such lease would be within the statute, and bind the wife and issue. A lease by custom or license is a common law interest: and though the statute cannot authorize the copyholder to create a common law interest to the prejudice of the lord, it may certainly bind that interest when created under a custom or license. 2 Watk. Cop. [194] (*g*). But according to Kitchen on Courts, one of the oldest books on copyholds, if a copyholder of an estate tail, by license of his lord, let for twenty years, rendering the ancient rent, and dies, the issue in tail may enter and defeat the lease. Kitch. 168, 4th ed. And the prevailing opinion is, that a lease by a tenant in tail of a copyhold, even with license, would not bind the issue in tail, although it would bind the lord who granted the license, in case of escheat or forfeiture.

Tenant in tail, &c. of copyholds of legal estate.

So where tenant in tail of a legal estate in *copyholds* contracts to sell, &c., if he die without barring the entail, the issue in tail will not be bound. 1 Watk. Cop. 146.

The lord of a manor cannot authorize an equitable tenant of a copyhold to demise, because there is no privity of estate between them, the person having the legal estate being the copyholder; and, according to the prevailing opinion, the same mode should be adopted for barring an equitable, as it would be necessary to pursue for the purpose of destroying a

Of equitable estates.

FOR A BUILDING LEASE.

Consideration. Agreement.

FIRST, the said [*lessor*] in consideration of the rents and covenants hereinafter agreed to be paid and performed, doth hereby for himself, his heirs, and assigns, agree with the said [*lessee*] his executors and administrators, that when and so soon as the said [*lessee*] (*b*), his executors, or administrators, shall have erected, built, and finished the dwelling-house and premises hereinafter mentioned, that he the said [*lessor*] shall and will (*c*) grant and demise to

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legal entail of copyholds: as by recovery, where the special custom requires a recovery to bar a legal entail; or by a surrender, where a surrender will bar an entail of the legal estate. Co. Litt. 60 b; *Radford* v. *Wilson*, 3 Atk. 815. Or by forfeiture and regrant, where the custom authorizes that mode. *Grantham* v. *Copley*, 2 Saund. 422 a; *Pilkington* v. *Stanhope*, 1 Sid. 314; 2 Keb. 127, *S. C.*: *Carr* v. *Singer*, 2 Ves. sen. 604; 1 Watk. Cop. 181; 1 Bac. Abr. 710; 2 Saund. 422 b. Serj. Williams's note (1); Sug. Vend. 177, 5th ed.; Sug. Gilb. Uses, 33 (9); 1 Pres. Con. 155. And a custom to bar by surrender may subsist in the same manor concurrently with a custom to bar by recovery. *Everall* v. v. *Smalley*, 1 Wils. 26; 2 Strange, 1197, *S. C.*; *Doe* v. *Turby*, 2 Black. Rep. 944.

Therefore, it seems clear, that an equitable tenant in tail of a copyhold, cannot bind the issue in tail, or the remainder-man, either by a contract for a lease, or by a contract for a sale.

(*b*) The executors and administrators of every person are implied in himself, and are bound by every covenant, and also in a bond, without being named, Dyer, 14, pl. 69; unless it be such an act as is to be performed *personally* by the covenantor, and there has been no breach before his death. Co. Litt. 209 a; Cro. Eliz. 553; 2 P. Wms. 197. But heirs must be expressly named, in a writing under hand and seal, otherwise they are not chargeable. *Gifford* v. *Manley*, Cas. Temp. Talbot, 108; 3 Bac. Abr. 458, *Heir*, &c. (F); Noy's Maxims, 200, 233, 241, 9th ed.

COPYHOLD.

(*c*) If the premises are of copyhold tenure, say,

To procure license to demise.

" at his own expense, procure from the lord or lords, lady or ladies of the manor or manors, of which the premises hereinafter mentioned are held, a license or licenses, if the same should be necessary, enabling him to demise †, and that he the said [*lessor*] shall and will thereupon"

Properties of a

† The term created by license is a common law, and not a copy-

FOR A BUILDING LEASE.

the said [*lessee*] his executors and administrators, by a good and valid lease in the law, ALL THAT piece or parcel of land, &c. situate, &c. with the appurtenances, which said premises are more particularly delineated and described in the plan or ground plot, drawn in the margin hereof, TO HOLD to the said [*lessee*], his executors, administrators, and assigns, from the —— day of —— next ensuing, for the full term of —— years; AT AND UNDER the yearly rent of —— pounds, payable quarterly, on Christmas-day, Lady-day, Midsummer-day, and Michaelmas-day, free and clear of and from the sewers rate, land-tax, and all and every other rate, tax, charge, assessment, or imposition whatsoever, either parliamentary or parochial, to which the landlord, tenant, or premises is or are, or hereafter shall or may be, liable; WHICH said indenture of lease and a counterpart thereof are to be prepared by the solicitor

Parcels.

Term.

Rent.

Lease and counterpart to be at lessee's expense.

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hold interest. Co. Cop. s. 51. Tr. 119—120. The lessee may make an assignment or under-lease for years without any further license or consent of the lord. Gilb. Ten. 299. For the lord's interest is discharged for so many years; and if the copyholder die without heirs, yet the lease will stand against the lord, by reason of his license, which amounts to a confirmation. *Turner* v. *Hodges*, Hutt. 102. So if the copyholder should forfeit his estate, the lease perhaps would stand good against the lord, the demise being by license. Hob. 177, pl. 203; 6 Vin. Abr. 218, pl. 5; 1 Cru. Dig. 326, s. 21; 359, s. 12. It is extendible at law; Watk. notes 148, 149; Gilb. Ten. 467; Gilb. Ten. 327, *contra;* and may even continue after the determination of the copyhold. 2 Watk. Cop. 37, 121; Watk. n. Gilb. Ten. 153, p. 469. The copyholder is tenant to the lord; on *his* death his heir must be admitted and pay his fine. But the lord cannot notice the change of the lessee: he has a tenant independently of him. 1 Watk. Cop. 301. Although copyholds are excepted in the Register acts, yet as leases of copyholds by license are common law interests, it is usual to register them and all assignments, if the estate created be of such a nature or extent, that, if derived from a freehold, they would require registry. Sug. Vend. 604, 5th ed. [And see *post*, Vol. 5, p. 215].

lease of a copyhold with license.

Mr. Watkins thinks the license should be on condition that the real annual value be reserved, in case of *forfeiture* or *escheat*. 2 Watk. Cop. 121 (*a*). But in a building lease that could not be done easily, nor is it known to have been adopted in any instance. It might sometimes be proper to provide in the license, that the copyholder shall not take any fine or premium on granting the lease.

FOR A BUILDING LEASE.

Usual covenants to be contained in lease.

[*44]

And to insure.

For painting outside.

Painting and papering inside.

Not to use any forge or anvil,

or carry on a manufactory,

or any offensive trade.

For repairing.

For delivering up premises at the end of term,

with all fixtures, &c.

Liberty for lessor to enter to view repairs.

Power of re-entry.

Covenant by lessee to accept lease.

of the said [*lessor*], at the costs and charges of the said [*lessee*], his executors and administrators, and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually reserved and contained in leases of *houses (in London and Westminster) (*d*); and also the following covenants on the part of the lessee, that is to say: for keeping the said dwelling-house and premises insured against fire in the sum of —— pounds, in some or one of the public offices of insurance in London or Westminster; *and also*, for painting twice in oil colours, all the outside wood and iron work of the said premises once in every third year of the said term; *and also* for painting and papering the interior of the said premises once in every seventh year of the said term; *and also*, not to use upon the said premises any forge or anvil (save and except small forges to temper tools and other matters); *nor* to exercise or carry on any sort of manufactory thereon; *and* not to carry on any noisome, dangerous, or offensive trade or business therein or thereupon; and not to set up a steam-engine thereon; *and also*, the usual covenant for repairing and keeping in repair the said premises and every part thereof; *and* for yielding and delivering up the same at the end of or other sooner determination of the said term, in good and proper repair, with all and every the fixtures, erections, and improvements which shall or may be made, fixed, or fastened, or set up in, upon, or about the said premises, which shall or may come under the denomination of landlord's fixtures: *and* for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of repair, and for the lessee to repair accordingly within three months after every such notice; *and* the usual proviso for *re-entry* on non-payment of rent, or on breach or non-performance of covenants; AND THE SAID [*lessee*] for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessor*], his heirs and assigns, that he

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COPYHOLD.

Not to contain any clause to cause a forfeiture.

(*d*) If the premises be copyhold,

"but shall not contain any covenant or clause which may by any means cause a forfeiture of the said premises;"

FOR A BUILDING LEASE.

the said [*lessee*], his executors or administrators, shall and will accept such lease, on the terms and conditions aforesaid, and execute a counterpart thereof, when required, and pay the charges of the same when prepared, as well as the charges for these presents (and a duplicate hereof); To execute counterpart, and pay the charges.

AND THE SAID [*lessee*] and [*surety*] as his *surety, do, and each of them doth hereby severally and respectively, and for their several and respective heirs, executors, and administrators, undertake, promise, and agree to and with the said [*lessor*], his heirs and assigns, that he, the said [*lessee*], his executors or administrators, or, on his default, the said [*surety*], his executors or administrators, shall and will, on or before the —— day of —— next, at his and their, or one of their own costs and charges, in a good, sound, substantial, and workmanlike manner, and with fit and proper materials of all kinds, to be approved by the architect (*or* surveyor) of the said lessor, and under the direction and inspection of his said architect (*or* surveyor) (*e*), erect, build, and complete (or cause (*f*) to be erected, built, and completed), and in a workman-like manner finish, one or more good and substantial brick messuage or tenement, messuages or tenements, fit for habitation, and in all things conformable and agreeable to the specification thereof hereunder written; *and* shall and will lay out and expend thereon the sum of —— hundred pounds and upwards; *and also*, shall and will bear, pay, and discharge the said architect's (*or* surveyor's) fees of *five* pounds *per centum* on the expenditure, for superintending and directing the same (*g*); AND for the

[*45]

Covenant by lessee and his surety to build a dwelling-house, &c.

To expend a certain sum.

To pay architect's fees.

Liquidated damages.

(*e*) "Pull down the said messuage, tenement, and premises, and on the site thereof, erect," &c.

To pull down and rebuild.

(*f*) This is useless: he who causes payment, pays. Serj. Williams's note, 1 Saund. 234 b, (6). So he who causes to be built, builds.

(*g*) AND *it is hereby further agreed* by and between the said parties to these presents, (that the said [*lessor*] shall, at his own expense, within ——— days from the date hereof, deliver to the solicitor of the said [*lessee*] an abstract of the title of the said [*lessor*] to the fee (*or* enabling him to grant the said lease) of the premises hereby

Lessor to deliver abstract of his title.

FOR A BUILDING LEASE.

of lawful money of Great Britain, to be recovered against the defaulters as liquidated * damages, in any of his Majesty's courts of record at Westminster. IN WITNESS, &c.

Specification.

THE SPECIFICATION above referred to.

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option to pay a penalty, and be released from the contract.

ance, this does not release the parties from their agreement, but they must perform it notwithstanding, and have not an option to pay the penalty and be released from the performance of the agreement. *Christ's Hospital* v. *Pugh*, Dom. Proc. 20 March, 1727. *Howard* v. *Hopkins*, 2 Atk. 371. *Chilliner* v. *Chilliner*, 2 Ves. Sen. 528. *Parks* v. *Wilson*, 10 Mod. 518. See *Hobson* v. *Trevor*, 2 P. Wms. 193, 2 Scho. & Lef. 684, and *Magrave* v. *Archbold*, 1 Dow, 107. *Sed vide Woodward* v. *Eyles*, 2 Vern. 119, a case of liquidated damages; as to which see 1 Swanst. 318, n. (*a*); 1 Madd. Ch. 44, 2nd ed.; Sug. Vend. 194, 5th ed.; Fonbl. Treat. Equity, 153, 5th ed. *Vide post*, Vol. 2, p. 627.

FOR A BUILDING LEASE OF PART OF PREMISES HELD UNDER AN AGREEMENT FOR BUILDING LEASES.

AGREEMENT *for a* BUILDING LEASE *of part of Premises, held under an Agreement for Building Leases, with Agreement by the Ground Landlord, to grant a separate Lease of the Premises, discharged from any Liability or Connection with the other Premises.*

ARTICLES OF AGREEMENT made and entered into this —— day of ——, in the year 18—;

Parties.

BETWEEN [*the vendor*], of &c., of the first part; [*the purchaser*], of &c., of the second part; and [*the ground landlord*], of &c., of the third part.

Recital of original agreement.

WHEREAS, by memorandum of agreement, bearing date on or about the —— day of —— last past, and made between the said [*landlord*], of the one part; and the said [*vendor*], of the other part; the said [*landlord*] agreed to let unto the said [*vendor*] *All that* piece or parcel of ground, &c., *To hold* unto the said [*vendor*], his executors, administrators, and assigns, for the term of —— years,

FOR A BUILDING LEASE OF PART OF PREMISES HELD UNDER AN AGREEMENT FOR BUILDING LEASES.

from the —— day of —— then next, *At* the clear yearly rent of —— pounds, payable quarterly, clear of the land-tax, sewers-rate, and all other rates and taxes whatsoever: and the said [*vendor*] agreed to expend the sum of —— pounds, in erecting —— dwelling-houses on the said piece or parcel of ground, within —— years from the date thereof, according to the plan and specification therein mentioned: *And* the said [*landlord*] agreed, that as soon as the said [*vendor*] should have erected one of the said dwelling-houses, he the said [*landlord*] would grant to the said [*vendor*], his executors, administrators, and assigns, either a lease of the whole of the said premises, at the said yearly rent of —— pounds, or several *separate leases [*49] of the said dwelling-houses and premises as they should be from time to time finished, or join with the said [*vendor*] in agreements for building leases of the remaining part of the said premises at apportioned rents, according to their respective value, to be ascertained by the surveyor of the said [*lessor*], to such person or persons as the said [*vendor*], his executors or administrators, should require and appoint; such separate leases, and agreements for leases to be granted, discharged from all connection and liability on account of the rents, covenants, and conditions relating to the other part of the said premises not demised, or agreed to be demised, by such lease or agreement for lease respectively: AND WHEREAS the said [*vendor*] hath erected one of the said dwelling-houses and premises to the satisfaction of the said [*landlord*]; AND the said [*purchaser*] hath agreed with the said [*vendor*] to purchase all his interest in the piece of the said ground hereinafter described, for the price of —— pounds, subject to the apportioned yearly rent of —— pounds, which hath been ascertained by the surveyor of the said [*lessor*] to be the proportionate part of the said yearly rent of —— pounds, which ought to be paid in respect of the said piece of ground; and thereupon the said [*lessor*] hath, upon the application of the said [*vendor*], consented to enter into the agreement hereinafter contained: NOW THESE PRESENTS WITNESS, that in consideration of the said sum of —— pounds of lawful money of Great Britain, to the said [*vendor*] well and truly paid by the said [*purchaser*], at or

Recital of contract.

Consideration.

FOR A BUILDING LEASE OF PART OF PREMISES HELD UNDER AN AGREEMENT FOR BUILDING LEASES.

immediately before executing these presents, the receipt whereof is hereby acknowledged, and thereof and therefrom the said [*vendor*] doth acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, by these presents; he, the said [*landlord*], by and with the consent, and at the request of the said [*vendor*], testified by his executing these presents, doth hereby for himself, his heirs and assigns, covenant and agree with the said [*purchaser*], his executors and administrators, that when and so soon as the said [*purchaser*], his executors or administrators, shall have completed and finished the several works and matters hereinafter particularly mentioned, that he, the said [*landlord*], his heirs or assigns, [*50] *shall and will grant and demise to the said [*purchaser*], his executors or administrators, by a good and valid lease in the law, ALL THAT piece or parcel of ground, situate, &c. particularly mentioned and described in the margin hereof, with the erections and buildings then erected thereon, with their appurtenances, TO HOLD to the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— last past, for the full term of —— years, AT and under the yearly rent of —— pounds, payable half yearly, on Michaelmas-day, Christmas-day, Lady-day, and Midsummer-day, clear of the land-tax, sewers-rate, and all other rates, taxes, charges, and assessments whatsoever: the first payment of the said rent by the said [*purchaser*], his executors and administrators, to begin and be made on the —— day of —— now next. WHICH said indenture of lease, and a counterpart thereof, are to be prepared by the solicitor of the said [*landlord*], at the costs and charges of the said [*purchaser*], his executors and administrators; and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually reserved and contained in leases of houses (in London and Westminster (*or*, in the neighbourhood); *and* also a covenant on the part of the said [*purchaser*], for painting twice in oil colours all the outside wood and iron-work of the said premises, once in every third year of the said term;] [(*a*) *and*

Agreement by ground landlord to grant building lease.

Term.

Rent.

Lease and counterpart to be prepared by solicitor to landlord, at lessee's expense:

and to contain usual covenants;

and a covenant to paint outside wood and iron work every third year.

To paint the interior,

(*a*) This is not a usual covenant.

for painting the interior of the said dwelling-house and premises, and papering the rooms on the ground and first floor once in every seventh year of the said term;] *and* also the usual covenant for repairing and keeping in repair the said premises, and every part thereof; *and* for yielding and delivering up the same at the end, or other sooner determination of the said term, in good and proper repair, with all and every the fixtures, erections, and improvements, which shall or may be fixed, or fastened, or set up, in, upon, or about the said premises, which shall or may come under the denomination of landlord's fixtures; *and* for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of repair, and for the lessee to repair accordingly within three months after every such notice; *and also* a covenant on the part of the lessee to insure the said *premises against fire in some insurance office in London or Westminster in the name of the lessor and lessee, in the sum of —— hundred pounds or more; *and also*, the usual proviso for re-entry on non-payment of rent (or (*a*) on breach or non-performance of the covenants). AND THE SAID [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*landlord*] his heirs and assigns, to accept such lease on the terms and conditions aforesaid, and to execute a counterpart thereof when required, and to pay the charges for the same when prepared, and also the charges for these presents. AND THE SAID [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*vendor*], his executors and administrators, that he the said [*purchaser*], his executors or administrators, shall and will, on or before the —— day of —— next, at his and their own costs and charges, in a good, sound, substantial, and workman-like manner, and with fit and proper materials of all kinds, to be approved by the architect of the said [*landlord*], and under the direction and inspection of the said architect, lay out and expend the sum of —— hundred pounds in erecting, building, com-

FOR A BUILDING LEASE OF PART OF PREMISES HELD UNDER AN AGREEMENT FOR BUILDING LEASES.

and paper the ground and first floor every seventh year.

To repair.

To deliver up at the end of term,

with the landlord's fixtures.

Liberty for lessor to enter to view, &c.

To insure.

[*51]

Power of re-entry.

Covenant by lessee with landlord to accept lease.

Covenant by lessee with vendor to erect a dwelling-house, &c.

(*a*) *Vide post*, 58.

FOR A BUILDING LEASE OF PART OF PREMISES HELD UNDER AN AGREEMENT FOR BUILDING LEASES.

pleting and finishing, and rendering fit for habitation, upon the said piece of ground, one brick dwelling-house covered with slates or tiles, with such party walls, conveniences, and necessaries to the same, as shall be requisite and fitting, and in all things conformable and agreeable to the specification thereof hereunder written; *and also*, bear, pay, and discharge the said architect's fees of five pounds *per centum* on the expenditure, for superintending and directing the same; And for the true performance of the said covenants and agreements, each of the said parties bindeth himself, and every of them bind themselves, his and their heirs, executors, and administrators to the other and others of them, in the penalty of —— hundred pounds of lawful money of Great Britain, to be recovered against the defaulter as liquidated damages in any of his Majesty's courts of record at Westminster (*b*). In witness, &c.

and pay architect's fees.

Liquidated damages.

Specification.

THE SPECIFICATION to which the above-written agreement refers.

(*b*) *Vide ante*, 47, (*h*).

[52]

FOR A BUILDING LEASE.

AGREEMENT *for a Building Lease, or several Building Leases, specially drawn, with proper Provisions for an extensive Undertaking.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon the —— day of ——, 18—, Between [*lessor*], of &c., of the one part; and [*lessee*], of &c., of the other part.

Parties.

Recital of agreement for lease.

Whereas the said [*lessor*] hath agreed to let, and the said [*lessee*] hath agreed to take, the piece or parcel of ground hereinafter particularly mentioned and described, upon the terms and conditions hereinafter expressed: Now

Covenant by

FOR A BUILDING LEASE.

THEREORE THESE PRESENTS WITNESS, and the said [*lessor*] doth hereby for himself, his heirs, executors, administrators, and assigns, covenant, promise, and agree to and with the said [*lessee*], his executors, administrators, and assigns, in manner and form following; that is to say, *That* he the said [*lessor*], his heirs and assigns, shall and will, upon the request, and at the costs and charges of the said [*lessee*], his executors, administrators, or assigns, when and so soon as the messuages or dwelling-houses, erections, and buildings hereinafter covenanted to be erected and built, shall be erected, built, and covered, to the approbation and satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs or assigns, as hereinafter mentioned, by a good and sufficient indenture of lease, or by good and sufficient indentures of lease, demise and grant unto the said [*lessee*], his executors, administrators, and assigns, ALL THAT piece or parcel of land, situate and being at &c., and containing &c., and bounded &c. TO HOLD the said piece or parcel of land, and the messuages or dwelling-houses, erections, and buildings intended to be thereupon erected and built, with the appurtenances, unto the said [*lessee*], his executors, administrators, and assigns, from the *twenty-fifth* day of *March* now next, for and during and unto the full *end and term of (*ninety-nine*) years thence next ensuing, and fully to be complete and ended: AT the yearly rent of a pepper-corn for the first two years of the said term; AND AT AND UNDER the clear yearly rent or sum of —— pounds for the remainder of the said term, payable quarterly, that is to say, on the *twenty-fourth* day of *June*, the *twenty-ninth* day of *September*, the *twenty-fifth* day of *December*, and the *twenty-fifth* day of *March*, in every year, free and clear of the land-tax, sewers-rate, and all other rates, taxes, assessments, and impositions, of what nature or kind soever, parliamentary, parochial, or otherwise; the first quarterly payment of the said rent of —— pounds to be made on the *twenty-fourth* day of *June*, which will be in the year of our Lord 1824: AND in consideration thereof, the said [*lessee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree to and with the said [*lessor*], his heirs and assigns, in manner following, that is to say, *That*

Lessor to grant leases when works finished.

Parcels.

Term.

[*53]

At the rent of a pepper-corn for the first two years; and —— pounds for the remainder of the term, payable quarterly.

Covenant by intended lessee to build.

FOR A BUILDING LEASE.

he the said [*lessee*], his executors, administrators, or assigns, shall and will, on or before the —— day of ——, 18—, at his or their own proper costs and charges, under the inspection, and to the satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs and assigns, erect, build up, and cover in, upon the said pieces or parcels of land hereby agreed to be demised, with stock bricks, and other good and proper materials of all sorts, in a substantial and workman-like manner, according to a plan and elevation thereof mentioned or contained in the schedule hereunder written (*a*), *twenty* messuages or dwelling-houses, of the first rate of building, to be covered with slate, and to have leaden gutters weighing at least seven pounds to the foot (*b*); the front and back walls of each messuage or *dwelling-house to be two bricks and a half thick in the cellar story; two bricks thick in the parlour and one pair of stairs story; and at least one brick and a half thick above the one pair of stairs story (except the parapets), and the parapets to be coped with Portland stone, and all the cross partitions to be carried on brick walls the height of the cellar story: AND ALSO, that he, the said [*lessee*], his executors, administrators, or assigns, shall and will, in erecting and building the said messuages or dwelling-houses, make and leave an area six feet wide, and fix a stone curb eight inches by six inches, with iron railing five feet high thereon at the level, to be respectively ascertained and approved of by the said architect or surveyor of the said [*lessor*], his heirs and assigns; *and* shall and will pave the footway in the front thereof with Yorkshire Ealand-edge paving; *and* lay a curb thereto of Cornish-moor stone, the whole to be seven feet and six inches wide; *and also*, that he the said [*lessee*], his executors, administrators, or assigns, shall and will [at his

Under inspection of architect, &c.

Dwelling-houses, &c. of the first rate.

Leaden gutters.

[*54]

To make an area with stone curb, and iron railing.

To pave the footway.

To pay a proportion of the expense of other

Conformably to other houses.

(*a*) " and conformably, or as near as may be, to the houses already built by [C. D.] in the said new intended street, a range of messuages, &c." (*as above.*)

Sheet-copper gutters.

(*b*) " or with sheet copper, weighing at least sixteen ounces to the foot superficial;"

and their own proper costs and charges] bear and pay a just and fair proportion (*c*) with the other tenants, lessees, and occupiers of any other lands, tenements, or hereditaments of the said [*lessor*], his heirs or assigns, or of any other person or persons whomsoever, near or adjoining to the premises hereby agreed to be demised, of all costs, charges, * and expenses incurred, or to be incurred, in the cutting, dividing, building, or making of all or any other pavements, ways, channels, public sewers, wydraughts, drains, and gutters, in, upon, through, under, or about the said premises hereby agreed to be demised, or any part or parts thereof; such proportion to be ascertained by the said architect or surveyor of the said [*lessor*], his heirs, or assigns: AND IT IS HEREBY COVENANTED AND AGREED by and between the said parties hereto, that it shall be lawful for the said [*lessee*], his executors, administrators, or assigns, at any time or times hereafter during the said term, to make and build arched vaults in the front of all or any of the said messuages or dwelling-houses, under the surface of the said intended street: *Provided*, that such vaults be made with good sound bricks; and such area, stone curb, iron railing, foot pavement and curb thereto, as hereinbefore mentioned to be made, shall be left and made, and in no wise injured thereby, but not otherwise; *and also*, that it shall be lawful for the said [*lessee*], his executors, adminis-

pavements, ways, channels, &c.

[* 55]

Agreement that lessee may make vaults under the street,

or build mews of stables and coach-houses.

(*c*) " of all expenses to be incurred in building and making a common sewer under ground in front of the said messuages or dwelling-houses, such proportion to be ascertained by the said architect or surveyor of the said [*lessor*], his heirs or assigns, but that he the said [*lessee*], his executors, administrators, or assigns, shall not nor will, at any time or times hereafter, convert or turn the soil of or from any privy or bog-house of or belonging to the aforesaid messuages or dwelling-houses, or of or belonging to any other messuages or dwelling-houses whatsoever, into the said common sewer so to be built and made as aforesaid; *and also*, that he the said [*lessee*], his executors, administrators, or assigns, shall and will bear and pay a just and fair proportion," &c.

To pay expenses of making common sewer.

FOR A BUILDING LEASE.

trators, or assigns, at any time or times hereafter during the said term, to erect and build a mews of stables and coach-houses, at a proper and convenient distance behind the said messuages or dwelling-houses covenanted to be erected and built as aforesaid; *and also,* to erect and build other coach-houses and stables, to be attached to the gardens of or belonging to the said messuages or dwelling-houses: *Provided,* that all and every such coach-houses and stables be erected and built of good and proper materials, in a substantial and workman-like manner, and covered with slate, and be situated and finished to the approbation and satisfaction of the said architect or surveyor of the said [*lessor*], his heirs or assigns, but not otherwise (*d*); *and* that when and so soon as the said *architect or surveyor shall have made his report to the said [*lessor*], his heirs or assigns, that the said messuages or dwelling-houses are erected, built up, and covered to his approbation and satisfaction, according to the true intent and meaning of these presents, the said [*lessee*], his executors, administrators, or assigns, shall be entitled to have separate leases of each messuage or dwelling-house, with the ground and appurtenances thereunto belonging, for the term of [*ninety-nine*] years, or so much thereof as shall be then to come and unexpired, and at such rents as shall be respectively ascertained by the said architect or surveyor of the said [*lessor*], his heirs or assigns, in a just and fair proportion to the said gross rent of —— pounds, on executing counterparts of such leases respectively, and paying for each of such leases and a counterpart thereof a sum not exceeding (—— *guineas*): AND IT IS HEREBY FURTHER COVENANTED AND AGREED by and between the said parties, that in all and every of the leases to be granted by the said [*lessor*], his heirs or assigns, in pursuance

or build other coach-houses and stables.

Lessee to be entitled to have separate leases, when works finished.

[*56]

Leases to contain covenants to complete houses properly.

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or carry drains to the common sewer.

(*d*) "*and also,* to carry any drains from the said messuages or dwelling-houses for conveying water or soil from a water-closet into the common sewer, belonging to the said [*lessor*], without paying any thing for the use thereof; but not to carry soil from any privy or bog-house into or towards the said common sewer;"

FOR A BUILDING LEASE.

of these presents, shall be contained covenants on the part of the said [*lessee*], his executors, administrators, and assigns, to complete the messuages or dwelling-houses, with the appurtenances so to be demised as aforesaid, and render the same fit for use and habitation, in a good, substantial, and workman-like manner, with all necessary and proper fixtures and fastenings to the same; *also*, to pay the rent to be thereby reserved, and the land-tax, sewers-rate, and all other taxes, rates, and assessments, of what nature or kind soever, parliamentary, parochial, or otherwise, payable for or in respect of the premises thereby to be demised, or any part thereof; *also*, to repair, amend, support, and keep the same premises, at all times during the said term, with or without notice from the said [*lessor*], his heirs or assigns, in good and substantial repair; *also*, to paint the external wood work and iron work of the same premises, with two coats of paint in oil colour, every fourth year; *also*, to insure the premises for the full value of so much thereof as can be damaged by fire in some public office of insurance from fire, in London or Westminster; and to keep the same so insured during the said term, and to produce and shew to the said [*lessor*], his heirs or assigns, or his *or their steward, agent, or receiver of rents for the time being, yearly and every year, the receipt given by or on the behalf of such office, acknowledging the payment of the premiums on the policy whereby the same premises shall be insured for the current or ensuing year; *also*, to pay a fair and just proportion of all expenses and charges for renewing or repairing pavements; renewing, cleansing, or repairing walls, gutters, pipes, drains, and water-courses, which shall be used in common by the occupiers of the said demised premises, and the occupiers of any other messuages, dwelling-houses, or other erections already erected, or hereafter to be erected on any other part of the now estate of the said [*lessor*], or of any other person or persons near or adjoining thereto; *and* to leave the premises at the end of the said term agreed to be demised, in good and substantial repair, together with all marble and other chimney pieces, mantle pieces, hearths, hearth stones, covings, jambs, foot pieces and slabs, sash and

To pay rent and taxes.

To repair.

To paint.

To insure.

[* 57]

To pay proportion of expenses for renewing and repairing pavements, &c. with adjoining occupiers.

To leave premises in repair with the fixtures, &c.

FOR A BUILDING LEASE.

other windows, casements, window shutters, doors, locks, keys, bolts, bars, and fastenings whatsoever; marble and other water closets, cisterns, and things thereunto belonging; and all wainscot partitions, fixed presses, shelves, dressers, drawers, pipes, pumps, posts, pales, rails, and other fixtures, fixed or fastened to the premises, or which shall be found thereupon, or upon any part thereof, during the last seven years of the said term; *also*, to permit the said [*lessor*], his heirs, and assigns, and his and their respective agents, surveyors, and workmen, to enter upon the premises agreed to be demised at any time or times during the term, for the purpose of surveying the same, and the state and condition thereof, and examining if any and what repairs are or may be wanting; and to repair, within three calendar months, to the approbation and satisfaction of the architect or surveyor for the time being of the said [*lessor*], his heirs or assigns, every defect which shall be found upon such survey or examination, and of which notice in writing shall be given at or upon the said premises; *also*, to permit the said [*lessor*], his heirs, or assigns, or his or their respective agents, surveyors, and workmen, to enter into and upon the said premises, or any part thereof, at *any time or times during the last *seven* years of the said term, for the purpose of taking a schedule or schedules of the fixtures therein or thereupon, or in or upon any part thereof; *also*, to restrain and prevent the said [*lessee*], his executors, administrators and assigns from cutting, maiming, or injuring any of the principal timbers or walls of the building or buildings, or from letting or converting any part of the premises into a shop for trade, or suffering any open or public shew of business therein, without the license of the said [*lessor*], his heirs or assigns, in writing, for that purpose first obtained: *and* from committing or suffering any annoyance to the other tenants, lessees, or occupiers of any other messuages, dwelling-houses, lands, or other hereditaments of or belonging to the said [*lessor*], his heirs or assigns, near or adjoining the premises agreed to be demised; *and also*, a clause for re-entry, on non-payment of the rent for twenty-one days after the aforesaid days of payment, if the same should be demanded upon or at any

To permit lessor to enter and view the state of the premises.

And to repair according to notice.

To permit lessors during last seven years to enter to make a schedule of fixtures.

[*58]

To restrain lessee from injuring principal timbers, &c. or carrying on any business there.

And from committing annoyance to other tenants.

Power of re-entry on non-payment of rent;

FOR A BUILDING LEASE.

time after such twenty-one days, and not paid when demanded (*e*): And also a covenant on the part of the said [*lessor*], his heirs and assigns, for the quiet possession of the premises so to be demised, against any person or persons claiming under him or them, or his or their ancestors, he the said [*lessee*], his executors, administrators, or assigns, paying the rent and performing the covenants and agreements thereby on his and their part agreed to be paid and performed; *and also*, all other covenants, clauses, and agreements, usual, necessary, or proper to be inserted and contained in leases of the like kind: And lastly, the said [*lessee*] doth hereby for himself, his heirs, executors, administrators and assigns, covenant, promise, and agree, to and with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, or assigns, shall and will accept and take leases of the said pieces or parcels of land, *with the messuages, or dwelling-houses, erections, and buildings to be thereupon erected and built as aforesaid, under the terms and conditions hereinbefore expressed, and execute counterparts thereof respectively, and pay such sum of money as aforesaid for each and every such leases and counterparts; *and also* the expenses of preparing and executing these presents and the counterpart thereof. In witness, &c.

by lessor for quiet enjoyment;

and all other usual covenants.

Covenant to accept leases and execute counterparts, and pay law charges.

[*59]

(*e*) Sometimes there is a clause of re-entry on breach or non-performance of any or either of the covenants or agreements contained in the lease, *ut ante*, 51; but that clause is now frequently omitted in common leases, because it may subject the lessee to the forfeiture of his lease, by neglecting to do perhaps some very trivial thing; and in building leases it is generally omitted.

FINISHING OR UNDERLEASE.

AGREEMENT *for a* FINISHING LEASE *of a Dwelling-House nearly completed by the Lessor, or for an* UNDERLEASE.

Parties.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—, BETWEEN [*lessor*], of &c., of the one part; and [*lessee*], of &c., of the other part.

Consideration.

FIRST, the said [*lessor*], in consideration of the rents, covenants, and agreements hereinafter mentioned, doth hereby for himself, his heirs, executors, and administrators,

Agreement.

covenant and agree with the said [*lessee*], his executors and administrators, that when and so soon as the said

When works are finished.

[*lessee*], his executors or administrators, shall have completed and finished the several works and matters hereinafter particularly mentioned, that he the said [*lessor*], his

To grant a lease.

(*a*) heirs or assigns, shall and will grant and demise to the

Parcels.

said [*lessee*], by a good and valid (*b*) lease, ALL THAT messuage, tenement, and premises, situate and being on the —— side of —— street, in the parish of ——, in the county of ——, and numbered —— in the said street, with all and singular the appurtenances thereunto belonging, together with the joint use of the *court or passage behind the same, in common with the occupiers of the adjoining houses, TO HOLD to the said [*lessee*], his executors, administrators, and assigns, from the —— day of ——, for the full term of —— years, AT AND UNDER the yearly rent of —— pounds, payable half-yearly, on Mid-

[*60]

Term.

Rent.

To be paid half a year in advance.

UNDERLEASE.

(*a*) If it be an underlease, say,

"his executors, administrators, or assigns,"

(*b*) "underlease,"

FINISHING, OR UNDERLEASE.

summer-day and Christmas-day (and each half-year's rent to be paid in advance) (*c*), free and clear of and from the sewers-rate, and all and every other rate, tax, charge, assessment or imposition whatsoever, either parliamentary or parochial, to which the landlord, tenant, or premises is or are, or hereafter shall or may be liable. WHICH said indenture of lease, and a counterpart thereof, are to be prepared by the solicitor of the said [*lessor*], at the costs and charges of the said [*lessee*], his executors and administrators, and are to contain the several covenants, clauses, provisoes, agreements, and restrictions, usually contained in leases of houses in London and Westminster (*d*); and moreover a covenant* on the part of the lessee for payment of the said rent half yearly (in advance) as aforesaid, during the whole of the said term, with power to distrain on non-payment thereof; *and* for painting twice in oil colours all the outside wood and iron work of the said pre-

Free from taxes.

Lease and counterpart to be prepared by lessor's solicitor at lessee's costs;

and to contain usual clauses.

And to pay the rent in advance.

[*61]

To paint outside every third year.

(*c*) " for the first two years of the said term,"

This is an unusual clause; but circumstances sometimes render it prudent.

(*d*) If it be an underlease, say, UNDERLEASE.

" and such other covenants, provisoes, and agreements on the part of the lessee, as are contained in the lease whereby the said [*lessor*] holds the said premises; AND IT IS HEREBY FURTHER AGREED between the said parties, that the said [*lessor*] shall not be required to produce any further evidence of the title to the said premises than a lease for years from [*original lessor*] to ([*original lessee*], and an assignment thereof from him to) the said [*lessor*], and that the said [*lessor*] shall covenant to produce the said lease (and assignment), and to permit the said [*lessee*], his executors, administrators, and assigns, at his or their own charges, to take or have attested copies thereof; *and also* a covenant to indemnify the said [*lessee*], his executors, administrators, and assigns, from all losses, costs, charges, damages, demands, and evictions, which he or they may sustain or be put unto on account of non-payment of the

Lessor not to produce freehold title; but to produce, and permit lessee to take, copies of lease and assignment.

Lessor to covenant to indemnify lessee against rent and covenants in original lease.

FINISHING, OR UNDERLEASE.

To paint every fifth year the iron columns,

outside shutters, and street door,

and to colour and clean the stucco and Bath stone work and colonnade.

To paint and paper interior every seventh year.

Not to alter the front or exterior of premises, without consent.

Not to fix shew-board, &c. except name and trade, over or on the side of shop or street door.

Not to expose goods for sale on outside.

not to use lamps, &c. upon or over colonnade.

Not to carry on dangerous or offensive trades.

mises once in every third year of the said term; (*and* (*e*) for painting all the iron columns in front of the said premises, of a Bath stone colour, every fifth year, and not oftener, between the *first* and *tenth* day of May, with anti-corrosian paint; *and* at the same time for painting in good oil colours the outside shutters of the shop and street door of an oak colour, and also at the same time to colour and clean all the stucco and Bath stone work of the said premises and colonnade, of a Bath stone colour, in order to preserve and keep up the character and uniformity thereof with the adjoining premises, forming the west side of the said street; *and also* for painting and papering the interior of the said premises once in every seventh year of the said term; *and also* proper and necessary covenants for prohibiting and restraining the lessee from altering the front or any part of the exterior of the said premises, without license in writing of the lessor; *or* in any manner writing upon or disfiguring, or fixing any shew or sign-board upon the said columns or colonnade, or any part of the said premises, except writing the name and trade or business of the occupier over or on the sides of the shop and street door; *and also* not to expose any goods or other articles for sale outside the said premises; *and also* not to use any lamps, flambeaux, fireworks, or illuminations, upon or over the said colonnade, or any part thereof, on any occasion whatever); *nor* to use or carry on any noisome or dangerous or offensive trade or business therein or thereupon, and particularly the trade and business of a print or caricature seller, or pub*lic auctioneers; *or* (*f*) any trade,

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rent, or non-performance of the covenants, conditions, or agreements reserved or contained in the same original lease, by the said [*lessor*], his executors, administrators, or assigns †;"

(*e*) These are special covenants.

(*f*) This is introduced when the lessee is not bound to insure.

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† *Vide* Com. Dig. *Covenant* (A. 4), Raym. 257.

business, mystery, or occupation, which shall or may be deemed hazardous on account of fire, and thereby subject the said premises to more than the common premium of insurance; (*and* generally to do every thing requisite and necessary for preserving and maintaining the due character and uniformity of the said premises, as part of the west side of the said street; *and* not to make, or permit to be made, without license from the lessor, any door-way, access, or communication whatever into or from the ——— from, by, or through the said premises agreed to be demised, or any part thereof); *and* not to alter, remove, or take away any of the doors, windows, or partitions of the said premises without the license of the lessor in writing; *and also* the usual covenants for repairing and keeping in repair the said premises, and every part thereof, (and the colonnade in front of the same), and yielding and delivering up the same at the end or sooner determination of the said term, in good and proper repair, with all the fixtures, erections, and improvements which shall or may be made, fixed, or fastened, or set up in, upon, or about the said premises (save and except the counter and fittings up of the shop); *and* for liberty for the lessor to enter and view the said premises twice or oftener in every year, and to give notice of the repairs, and that the lessee shall repair accordingly within three months after every such notice; *and* the usual proviso for re-entry on non-payment of the rent, or on breach or non-performance of covenants: AND THE SAID [*lessee*], for himself, his executors and administrators, doth hereby agree to accept such lease on the terms and conditions aforesaid, and to execute a counterpart thereof when required, and to pay the charges for the same when prepared, and of this agreement (and a duplicate hereof); *and also* that the said [*lessee*], his executors or administrators, shall and will, on or before the —— day of —— now next, at his and their own costs and charges, paper all the rooms in the first, second, and third floors of the said house with proper and suitable paper and bordering; *and also* set up a dresser and shelves, *and a proper and substantial leaden cistern cased with wood, with leaden water pipes thereto, in the kitchen,

FINISHING, OR UNDERLEASE.

To preserve the uniformity of premises.

Not to make a passage through premises without consent.

Not to alter or remove doors, &c. without license.

To repair, &c. and deliver up at end of term.

With the fixtures, &c.

except the counter, &c.

Lessor to enter to view and give notice of reparations.

Lessee to repair accordingly.

Power of re-entry.

Covenant by lessee to accept lease, execute a counterpart, and pay law charges.

To paper rooms in first, second, and third floors.

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To make dresser and shelves, and cistern in kitchen.

FINISHING, OR UNDERLEASE.

which with all other fixtures, fastenings, erections, and improvements, shall remain at the end of the said term for the benefit of the said [*lessor*], his (*g*) heirs and assigns. In witness, &c.

(*g*) If it be an underlease,

UNDERLEASE. "his executors, administrators, and assigns."

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

AGREEMENT *for a Lease of great or small* Tithes, *with or without the* Glebe Lands (*a*); *and either of a whole Parish, or of a particular Farm.*

ARTICLES OF AGREEMENT made and entered into this —— day of ——, 18—, Between

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Leases by ecclesiastical persons.

(*a*) By the common law, churchmen, after being completely inducted into their benefices, and reputed to be seised in fee in right of them, enjoyed as ample a power of leasing as any person seised of a temporal estate in his natural capacity, provided the consent of necessary parties was previously obtained. Watson's Clergyman's Law, 424, 4th ed. c. 41; Co. Litt. 44 a; 4 Bac. Abr. 39; Gwill. ed. *Leases* (E). To leases by ecclesiastical corporations *aggregate*, no consent was essential. But to those made by *sole* ecclesiastical corporations, as archbishops, bishops, deans, archdeacons, prebendaries, parsons and vicars, the consent and confirmation of others were required in order to bind their respective successors. Toller on Tithes, 24. Thus leases made by archbishops and bishops are to be confirmed by the dean and chapter, or deans and chapters, if there be several chapters: leases made by deans are to be confirmed by the bishop and chapter; leases made by prebendaries and archdeacons, by the bishop, dean, and chapter; but if the King be patron of a prebend, then the king and dean and chapter, and not the bishop, ought to confirm the grant; leases made by parsons and vicars should be confirmed by their patrons and ordinaries; and leases made by the incumbent of a donative, by the patron alone. But if a parson make a lease, which is confirmed by the bishop only, who is patron, without the dean and chap-

Confirmation necessary to leases by sole ecclesiastical corporations.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

ter, who ought to have joined, it will bind the successor during *the lives of the bishop and incumbent, although the bishop be translated. But leases made by parsons, vicars, prebends, &c. *before* induction or installation, &c. although confirmed, are not binding on the successor. Degge's Parson's Counsellor, 120, 6th ed. c. 10.

What leases ecclesiastical persons may now make.

Considerable alteration, however, is introduced by the several enabling and restraining statutes, namely, 32 Hen. VIII. c. 28; 1 El. c. 19; 13 El. c. 10; 14 El. c. 11 and 14; 18 El. c. 11; 43 El. c. 29; and 1 Jac. 1, c. 3. Their principal result is, that all colleges, cathedrals, and other ecclesiastical and eleemosynary corporations, and all parsons and vicars, are restrained from making any leases of their lands, unless under the following regulations:—They must not exceed twenty-one years, or three lives from the making.—The accustomed rent, or more, must be yearly reserved thereon; and where a part of lands, usually let for a certain rent, be leased, the ancient rent must be reserved *pro ratâ*, 39 and 40 Geo. III. c. 41.—Houses in corporation or market-towns, may be let for forty years, provided they be not the mansion houses of the lessors, nor have above ten acres of ground belonging to them; and provided the lessee be bound to keep them in repair; and they may also be aliened in fee simple for lands of equal value in recompence. No lease (by the equity of the statute) shall be made without impeachment of waste. Co. Litt. 45 a. All bonds and covenants, 14 Eliz. c. 11, s. 15; or judgments, 45 Eliz. c. 9, s. 8, tending to frustrate the provisions of the statutes of 13 and 18 Elizabeth, shall be void.

Confirmation still requisite to bind the successor.

These restrictive statutes do not by any construction enable any persons to make such leases as they were by common law disabled to make. Therefore, a parson, or vicar, though he is restrained from making longer leases than for twenty-one years or three lives, even *with* the consent of patron and ordinary, yet is not enabled to make any lease at all, so as to bind his successor, *without* obtaining such consent. Co. Litt. 44 b. Although leases contrary to these acts are declared void, yet they are good against the *lessor* during his life, if he be a sole corporation; and are also good against an aggregate corporation, so long as the head of it lives, who is presumed to be the most concerned in interest. For the act was intended for the benefit of the successor only; and no man shall make an advantage of his own wrong. Co. Litt. 45 a.

There is another restriction with regard to college leases, by statute 18 Eliz. c. 6, which directs that one third of the old rent then paid, should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6*s.* 8*d.*, or a quarter of malt for every 5*s.*, or that the lessees should pay for the same according to the price that wheat and malt should be sold for, in the market next adjoining to the respective colleges, on the market-day before the rent becomes due. 2 Bla. Com. 321.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

What concurrent leases may be made by ecclesiastical persons.

A master or fellows of a college, dean and chapter, master or guardian of an hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, may make concurrent leases, with the necessary confirmations; but by the 18 El. c. 11, s. 2, these leases must be within *three* years of the determination of the former lease, by expiration, surrender, or ending. Degge, 119, c. 10. As the words, "*or any other*, &c." come after parson or vicar, who are of an inferior order, they do not comprehend bishops, who are of a superior order; Wood's Inst. 261, 10th ed. consequently this statute does not extend to bishops, and therefore they may make a concurrent lease, with the confirmation of the dean and chapter; but it must take effect from the making; and as the second lessee can have no benefit from it, so long as the first lease endures, because the second lease is in effect void for all the years that are to come of the first lease; those years which are to come of the first lease, and those which remain of the second lease, making in all no more than twenty-one years at one time; therefore such a lease is not against the exception. 1 Eliz. c. 19. 4 Bac. Abr. 64. Gwill. ed. *Leases* (E), Rule 3. But a bishop cannot make a concurrent lease for life to bind the successor, when there is a precedent lease for years in being, because, by the words of the statute upon leases made by bishops, the ancient rent must be reserved, and yearly payable; and the rent reserved upon the grant for three lives in reversion, although it be due, yet the successor has no remedy for it during the lease for years, by distress; nor by action of debt, before the statute 5 Geo. III. c. 17, because it was reserved upon a lease for life; nor has he any remedy by assize, for he has no seisin: and so it is not due or payable, according to the intent of the statute. *Marler* v. *Wright*, Cro. Eliz. 141. But if the lease for lives were made to the lessee for years, as the previous lease for years would merge in the estate for life, or rather would be surrendered by accepting the lease for life, the successor would be bound by it. Nor can a bishop make a concurrent lease for years to bind the successor, when there is a precedent lease for life in being. Degge, 119, c. 10.

Leases for years of *tithes* by bishops are only voidable by the successor.

It seems, that if a lease, not warranted by the statutes, be made of tithes for years by a *bishop*, this is not void, but voidable only in respect even of the successor; and if the latter accept rent, it amounts to a confirmation. Bro. Abr. *Acceptance*, pl. 9. *Lease*, pl. 18. Moore, 778. For it is said, 4 Bac. Abr. 120, Gwill. ed. *Leases* (H), (where many authorities are cited as to these matters, but not all strictly in point), that before the third council of Nice in the year 710, bishops might, by their *sole alienation have bound the successor for ever; and although by that council such alienations are restrained as injurious to the church, and the confirmation of the dean and chapter made necessary, yet this is only as to binding the successor. For the fee-simple is reputed to continue in the bishops, and therefore leases for years made by them subsist after their death, or re-

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FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

moval, till avoided by the successor, with the aid of the canons made at that council, which have received a sanction from our law. Plowd. Com. 264. But *parsons* and *vicars* never had such power of alienation; and though they have been deemed for the *benefit* of the church and their successors to be seised of a sort of qualified *inheritance*, they have been allowed an estate for *life* only, as to any acts that might prejudice the next incumbents. Co. Litt. 341 a. Therefore, leases for years by parsons and vicars, not confirmed by the patron and ordinary, become absolutely void by the death, or cession of the lessors, and are not confirmed for the residue of the term against the successor by his acceptance of rent. Leases for years are expressly mentioned, because leases for life or lives of tithes made by any ecclesiastical persons, are, on the principles of the common law, without the aid of the statutes, which will be presently mentioned, valid only against the lessors themselves, and are absolutely void against the successor, and incapable of being ratified by his acceptance of rent; and, also, because the leases for life or lives by parsons or vicars of things that lie in livery, as of their glebe land, are avoidable only by reason that such leases being freehold could not be perfected without the solemnity of livery of seisin, where any thing corporeal was conveyed, and consequently required the entry of the successor to defeat them, who could not so enter after rent received, or any other act done by him in affirmance of the lease. Bro. Abr. *Acceptance*, pl. 26. *Lease*, pl. 19. See *Brewer* v. *Hill*, Gwill. 1421; 2 Anstr. 413, *S. C.* In like manner, if a disseisor or other wrongful possessor of lands without the right thereto conveys an estate for life by livery of seisin, a freehold interest actually passes; which is founded on the efficacy of this solemn mode of assurance, without any regard being paid to the imbecility of the alienor's title. This digression was necessary to explain why the above observation confines the doctrine of leases by parsons and vicars without confirmation by patron and ordinary, being wholly void on the death or removal of the lessor, and incapable of being substantiated against the successor, to leases for years only.

Leases for years of tithes by parsons and vicars, not confirmed by the patron and ordinary, do not bind the successor, although he accept the rent.

It seems, however, that the leases of parsons confirmed by patron and ordinary, and otherwise conformable to the statutes, are good, al- *though made by a parson *de facto* only, and who is afterwards lawfully deprived of his benefice: 1 Roll. Abr. 476, (F), pl. 1. Cro. Eliz. 775. Mo. 606. 5 Vin. Abr. 366, pl. 1: but it is different as to a lease by a bishop *de facto*, although confirmed by the dean and chapter. *O'Brian* v. *Knivan*, Cro. Jac. 552, 554.

Leases by ecclesiastical persons, *de facto*.

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The acceptance of rent, which is to affirm the voidable lease of a preceding bishop, must be by him, who is perfectly in possession as successor, at least according to one case, Palm. 175, in which such acceptance of rent was deemed unavailable, because the successor had not at the time obtained restitution of the temporalties; but it may be questioned, whether that point would now receive the same adjudication. [It is apprehended that the rules respecting the avoidance and affirmance of such leases,

Acceptance of rent by succeeding bishop affirms a voidable lease.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

applies both to the lessor and lessee; for] it appears equitable, that the rule should be mutual; Poph. 121; and that if the lease be voidable, both lessor and lessee should be bound by affirmance; or if absolutely void without entry, or other ceremony, both should be discharged. In the latter instance, the successor has no remedy under the covenants in the lease, nor for the stipulated rent accrued in his own time; but it is apprehended he might maintain an action for use and occupation, or for the mesne profits after a recovery in ejectment.

Non-residence of clergymen does not avoid their leases.

Besides the restrictions above-mentioned and alluded to, there existed till very lately another mode, by which the leases of beneficed clergymen were rendered void. This happened in case of their non-residence, it being first so enacted by statute 13 El. c. 20. But that statute, with all its legislative explanations, additions, and alterations, and so much of the act 3 Car. 1, c. 4, as made the first act perpetual, were by statute 43 Geo. 3, c. 84, s. 10, repealed; and that act was repealed by the 57 Geo. 3, c. 99†, and new regulations made for enforcing the residence of beneficed clergy; and by the last-mentioned act, it is provided that clergymen shall not take to farm above eighty acres of *land*, without the consent of the bishop; but there is no restriction in this act against a lease of *tithes* being made to clergymen.

Clergymen may be farmers of land or tithes.

Freehold leases of tithes were formerly void against a succeeding bishop.

It has been before intimated, that freehold leases of tithes were heretofore void in favour of the successor. Thus, where a bishop being seised in fee of tithes in right of his bishoprick, made a lease thereof for three lives, rendering the ancient rent at which they had usually been demised; the lessor died, and the question was, whether the lease was binding upon the successor: it was resolved, that it did not bind him; for he had no remedy for the rent, either by distress, or by action of debt, because it could not be called rent; but it would have been otherwise if it had been a lease for years, for in such case an action of debt may be maintained. Moore, 778.

[*68] Annual payments re*served out of incorporeal hereditaments were not by our old lawyers allowed to be properly rents, for this reason, that they were not recoverable by distress, the terms being convertible. 2 Wooddeson's Lectures, 67, *et seq.* Such payments could not be distrained for, because incorporeal hereditaments, as creatures of the imagination, have no locality; Noy's Maxims, 112, 9th ed.; and by the ancient statute of Marlbridge, 52 H. III., c. 15, (which is said to be but in affirmance of the common law, 2 Inst. 131) distresses must be locally made. Consequently, if a yearly payment had been reserved on the demise of tithes, and something corporeal, as a barn, jointly, the same was considered as a rent issuing wholly out of the barn in respect to the remedy by distress. Gwill. 359. For which reason, it is frequently advisable, that the lessee should give the lessor a power of entry and distress, on his lands and tenements, goods and chattels generally; which, as it gives a summary remedy to recover

† *Vide* Vol. 2, p. 252.

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the rent, is preferable to the tediousness and expense of an action at law. *See the* FORM, *post*, 76. Neither could the successor maintain an action of debt on a freehold demise of tithes during the continuance of the estate for life or lives; because that is a personal action, and to recover rents so reserved would be to recover seisin, which species of judgment is descriptive of a real action. Hence it is, that even acceptance of rent by the succeeding bishop, would not have availed to substantiate a freehold demise of tithes, because, if the rent afterwards became in arrear, he was without remedy under the lease, being precluded from the easy and obvious resources of distress and action of debt, and also from bringing a species of real action, called an assize of rent; for such payments out of things incorporeal are no legal rents. 2 Cro. 173. 8 Co. 46 a. Now, however, by the statute above alluded to, 5 Geo. III., c. 17, the same power of bringing actions of debt, which, by a former law, 8 Ann. c. 14, s. 4, had been indulged to lessors against tenants for life as to proper rents, is extended to sole and aggregate ecclesiastical corporations, heads and fellows of colleges, and others having power of leasing, to recover rent reserved on tithes and incorporeal hereditaments, although leased for life or lives. The statute of Geo. 3 recites, that it may be doubtful whether by the laws in being such lessors as aforesaid could grant leases of tithes or other incorporeal hereditaments, which lie in grant and not in livery, for three lives or for twenty-one years, although the antient rent or yearly sum is thereby reserved, and all other requisites prescribed by the acts of Parliament are justly observed, by reason that there is generally no place wherein to distrain for such rent or yearly sum; and that it may also be doubtful, whether, in cases of such leases for life or lives, there was any remedy by *action of debt or otherwise; but it is not represented as in any degree questionable, whether the lessors and their successors might have that personal suit on a demise for *years*: and the other doubts recited may perhaps be thought resolved by the authorities stated in this note, except as to the power of such ecclesiastical and other persons to grant leases for years of tithes and other incorporeal hereditaments, because, although here the remedy by action of debt might be had, yet the other remedy by distress failing, and so the payment reserved not being properly a *rent*, the antient rent could not be said to be reserved, which is one of the requisites prescribed by the acts of Parliament. See Co. Litt. Hargr. ed. 44 b, (3). After these recitals, the new statute proceeds to give validity to all such leases of tithes and incorporeal hereditaments (with a saving, however, of the restrictions imposed by the founders of colleges and of the like local regulations), and allows the *action of debt* to be maintainable by the lessors themselves, their personal representatives, or their successors, against the lessees, their heirs, executors, administrators, or assigns, for the rent due on such leases, whether made for *life* or for *years*. Toller on Tithes, 26.

Ecclesiastical persons may by statute bring an action of debt for rent of tithes reserved on leases for lives or years.

[*69]

From the cases *Talentine* v. *Denton*, Cro. Jac. 111; *Dalston* v. *Reeve*, Action of debt

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lies against assignee of lessee for years of tithes at common law.

Action of covenant lies against assignee of lessee of tithes at common law.

1 Ld. Raym. 77, and the opinion of Lord *Hale*, and also from the inclination which the Court discovered to support the demise in the case of the *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 296, as a lease, with all the properties incident to a lease of corporeal hereditaments, it should seem, that a lease *for years* of tithes was good at the common law, and the rent went along with the reversion, and the assignee of the lease was bound to pay it, and the reversioner might bring an action of debt for the rent against the assignee. However, this point appears to have received a more solemn decision in a subsequent case, where it was held, that a covenant in a lease for years of tithes, made by the lessee respecting them, should run with the tithes and bind the assignee of the lessee; and consequently, that an action would lie against him for a breach of such covenant. That was an action of covenant by a rector of a parish against the assignee of his lessee for years of his tithes, who had covenanted for himself, his executors, administrators, and assigns, not to let any of the farmers of the parish have any part of the tithes, without the plaintiff's consent: and the breach assigned was, that the defendant, the assignee, after the premises came to him by assignment, let some farmers in the parish have part of the tithes without the plaintiff's consent. After verdict for the plaintiff, it was objected in arrest of judgment, that the action did not lie against the assignee, for it was a mere personal and [*70] collateral *covenant binding the lessee only; and that tithes were incorporeal, lying in grant, and therefore such a covenant could not run along with them, as it would with lands which lay in livery; and that a rent could not be reserved out of them, for if a lease were made of them by deed for years, it was good, by way of contract, to have an action of debt against the lessee, but the lessor could not distrain; and that the assignee of the tithes was not chargeable with the rent, and consequently the defendant could not be chargeable with breach of covenant in that case.—But it was answered and resolved by the Court, that the action was maintainable against the assignee; for, as to the objection that tithes were incorporeal, and therefore the assignee was not bound, they answered, that tithe was a tenth part of the profits of the land; the profits of the land were the land itself; tithes were tangible and visible; might be put in view in an assize; an ejectment lay for them; a *præcipe quod reddat* lay of a portion of tithes, and they were realized by statute 32 Hen. VIII. c. 7, s. 7; a warranty might be annexed to incorporeal inheritance; and that they had every property of an inheritance in land, except that they lie in grant and not in livery; and Dyer, 85 a, b, was cited. And as to the objection that a lease of tithes was not good, and that the assignee was not chargeable with the rents, they cited the argument of Saunders, *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 303, which they said was an exceeding good one, and with which they concurred; and they also cited *Tippin* v. *Grover*, Sir T. Raym. 18, and said that debt lay for rent reserved upon a lease for years of tithes at the common law. *Bally* v. *Wells*, 3 Wils. 25.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

The statute 32 Hen. VIII. c. 7, s. 7, having put tithes in the hands of lay impropriators upon the same footing with any of their corporeal hereditaments, and turned them, as it were, into lands and tenements, it seems to follow, that since that statute a lease made of tithes by a lay impropriator for *years*, has the same properties, except as to the remedy by distress, as a lease made by him of any of his lands and tenements; and therefore that he may bring an action of debt for rent against the assignee of his lessee of tithes, in the same manner as he can do against the assignee of a lease of his lands. Wms. n. 2 Saund. 304 a.

It seems that lay impropriators may bring an action of debt against assignee of lessee for years.

But as the act of Parliament names divers corporations sole and aggregate, and then adds, "any other person or persons having any spiritual or ecclesiastical promotions," without any mention of *lay impropriators;* therefore, a question has been raised of what remedy at common law, without the aid of a court of equity, a lay impropriator could avail himself, to recover the yearly payments reserved on a lease granted by him of his tithes for *life* or lives, if he should so de*mise them. 2 Wooddeson's Vinerian Lectures, 71. But perhaps that law now giving such payments the denomination of rents, they might fall within the provisions of the statute of Anne above mentioned; if not, there is this defect which still remains to be supplied. Toll. 31.

But it seems doubtful as to leases for life of tithes by lay impropriators.

[*71]

Freehold leases of tithes are regulated by the same common law principles as the like *quantum* of interest or estate in corporeal hereditaments, whether the demise is made by a spiritual rector seised in right of his church, or by a lay impropriator seised of a rectory, or a portion of tithes, being a temporal inheritance, as appears by the following case of *Edmonds* v. *Booth*, Yelv. 131. Gwill. 228, *S. C. Rabbit* being seised of land to him and his wife and to his heirs, took a lease from *Booth*, parson of B., of all his tithes of this land, by indenture, to hold *from Michaelmas next* to him and his heirs during the life of *Booth*. The lessee died, and his widow having the land for her jointure, married *Fowler*, who demised it to *Edmonds;* and the heir of *Rabbit*, being entitled to the tithes under the lease to his ancestor, (*Fowler* and his wife having no claim to them), demised them also to the same tenant, who thus held the land and the tithes by distinct titles from several persons. Under these circumstances *Booth* sued *Edmonds* in the spiritual court for tithes of the land, in derogation of the lease granted by himself; and on an application to the Court of King's Bench to stay such suit, it was allowed to proceed by the opinion of the majority of the judges, (then being five), on the ground that the lease to *Rabbit* was absolutely null, because generally by the common law no freehold interest can be granted commencing *in futuro*, as here, from the ensuing Michaelmas. The case is thus recited, not so much to evince this point as to elucidate another, which could not otherwise be explained, and seems to merit some attention. It was insisted, in support of the lease, that it was made only of the tithes of that land of which

Freehold leases of tithes are governed by the common law principles.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

Rabbit was then the owner, so that it did not enure by way of interest, but by way of discharge and retainer, for a man cannot have tithes of his own land; and then a *discharge* may well commence at a day to come. But to this it was answered, that the pleadings allege, that, by force of the lease in question, *Rabbit* was seised of the tithes to him and his heirs during the life of *Booth*, and being so pleaded by way of interest, they, as judges, could not intend or construe it otherwise. Such lease cannot enure by way of discharge, for it contains no words to that effect, which proves it was not intended by the parties to operate but by way of interest; and that is more beneficial to the lessee: for, if it should enure by way of discharge only, it is such a privilege annexed to the land as cannot be granted over; but it may, if by way of interest, and so it seemed understood by the persons concerned, for the wife was owner of the * land, but the son took upon himself to be owner of the tithes, which could not be if the first lease had enured by way of discharge.

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Contract for tithes may operate by way of discharge.

Such a contract, however, in the nature of a demise, may enure (with apt words for that purpose) by way of discharge from tithes, being effected by deed, and entered into for a reciprocal valuable consideration, as an annual payment†; and it may be good during the incumbency, and be explicitly extended to the farmers and tenants of a landlord so contracting. 2 Cro. 137.

Demise of tithes for such time as lessor shall continue rector, &c. passes a freehold.

Again, a demise of tithes during such time as the lessor shall continue rector or vicar, passes to the lessee a freehold, such being the estimation of uncertain interests in all species of real property, which may possibly endure for any life or lives; *Brewer* v. *Hill*, 2 Anst. 413; Gwill. 1421, *S. C.* and with respect to incorporeal hereditaments, as tithes are, and lie in grant, the mere delivery of the deed has the same force as livery of seisin in the case of land; but if a rectorial or vicarage house, (which are corporeal hereditaments, and lie in livery), are demised with the tithes, and the latter only pass as parcel of the rectory or vicarage, the intended freehold demise is ineffectual for the whole, as conveyances at common law without livery of seisin. Toll. 32.

If lands be also demised for life, livery is necessary.

Leases by ecclesiastical persons in the city of London.

By the 22 Car. II. c. 11, s. 61, the dean and chapter of St. Paul's, London‡, are enabled to make leases to the city of London, of certain lands set out for holding Newgate-market, in the city of London, for the term of forty years, reserving a rent according to the provision of that act; and so from forty years to forty years for ever, at the same yearly rent, and one year's rent to be paid by way of fine upon every renewal. And by the same act, parsons and vicars of parishes within the city of London, are empowered to make building leases with the consent of the patron and

[† *Vide post*, Vol. 4, p. 556.]

[‡ See the form of a Lease of an Impropriate Rectory by them, *post*, Vol. 5, p. 129.]

ordinary, of their glebe lands within the said city, for any term not exceeding forty years, and at such yearly rents, without fine, as can be procured for the same.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

By the 57 Geo. III. c. 99, s. 32, it is enacted, "That all contracts or agreements made for the letting of the house of residence, or the buildings, gardens, orchards, and appurtenances necessary for the convenient occupation of the same, belonging to any benefice, to which house of residence any spiritual person shall be required by order of the bishop, as therein mentioned, to proceed and to reside therein, or which shall be assigned or appointed as a residence to any curate by the bishop, shall, upon a copy of such order, assignment, or appointment being served upon the occupier thereof, or left at the house, be null and void; and a copy of every such order, assignment, or appointment, shall, immediately on the issuing thereof, be transmitted to one of the churchwardens of the parish, or such other person as the bishop shall think fit, *and be by him forthwith served on the occupier of such house of residence, or left at the same. And any person continuing to hold any such house of residence, or any such building, garden, orchard, or appurtenances, after the day on which the said spiritual person shall be directed by such order to reside in such house of residence, or which shall be specified in any such assignment, or appointment, and after service of such copy as aforesaid, or the same being so left as aforesaid, shall forfeit the sum of forty shillings for every day he shall, without the permission of the bishop in writing for that purpose obtained, wilfully continue to hold any such house, building, garden, orchard, or appurtenances, together with the expense of serving such order, in case it shall have been deemed necessary specially to serve such order, to be allowed by the bishop issuing the order or making such assignment or appointment as aforesaid, and to be recovered and applied in like manner as the penalties for non-residence are directed to be recovered and applied by the provisions of this act; and it shall also be lawful for the spiritual person so directed to reside as aforesaid, or curate to whom any such residence is assigned, to apply to any justice of the peace or magistrate of the county, riding, province, city, or place, for a warrant for the taking possession thereof: and the justice of the peace to whom any such order for such possession is produced, shall, and he is hereby required thereupon to give a warrant for such possession; and possession may thereupon be taken of such house under such warrant at any time in the day-time, by entering the same by force, if necessary, without any other proceeding by ejectment or otherwise."

Contracts for letting houses, in which any spiritual persons shall by order of the bishop be required to reside, shall be void.

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Holding possession after the day appointed for residence.

Penalty.

And spiritual person directed to reside, may have warrant for possession from justice.

A lay impropriator in fee may lease his whole rectory, or a parcel of it, as the tithes of a particular farm, for any number of years, without restraint; and if he demises such parcel, and subsequently to that lease makes a grant of the rectory generally, the grantee will be entitled to the

Lay impropriators may lease their tithes for any number of years.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

[*lessor*], of &c., of the one part; and [*lessee*], of &c., of the other part.

Agreement to grant lease.

FIRST, the said [*lessor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*lessee*], his executors, administrators, and assigns, in consideration of the rent, covenants, and agreements hereinafter mentioned and contained, that he the said [*lessor*] shall and will [on or before the —— day of —— now next, or] when thereunto required in writing by the said [*lessee*], his executors, administrators, or assigns, demise and lease unto the said [*lessee*], his executors, administrators, and assigns (*b*); ALL and all manner of tithes,

Parcels.

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tithes of that farm, after the lessee's term is expired, though, if the lease be made (as commonly) to the occupier of the land, there is, during its continuance, a suspension of actual payment of these tithes, for they exist in speculation as parcel of the rectory; and the reversion in them subject to the term passes to the grantee. *Dickenson* v. *Reade*, Gwill. 358. Toll. on Tithes, 34.

Leases and conveyances of tithes must be by deed.

As tithes are incorporeal hereditaments lying in grant, all leases or grants of them must be by deed; and no parol demise, nor any written instrument short of a deed, will be effectual to pass them *legally* to a stranger, though a parol agreement may be sufficient to authorize the occupier to keep them by way of retainer. *Keddington* v. *Bridgeman*, Bunb. 2. *Tanner* v. *Small*, Yelv. 95. Het. 121. *Adams* v. *Waller*, Gwill. 1204. *Anon.* Godb. 354. *Withy* v. *Saunders*, 1 Leon. 23. *Nelson* v. *Woodward*, Cro. Eliz. 188. 249. *Hawkes* v. *Brayfield*, Cro. Jac. 137. *Brewer* v. *Hill*, 2 Anst. 419. *Swadling* v. *Piers*, Cro. Jac. 613. 4 Bac. Abr. *Leases* (E) 5. Mirehouse on Tithes, 175. And if a tithe owner agree with another to permit him to take the tithes of corn and hay for six years, and permit him accordingly, this is a good consideration (though not valid as a lease, and though no legal interest passes in the tithes) to found an action to recover the payment stipulated for in return. *Eaton* v. *Sherwin*, Skin. 113. 2 Show. 307. But a *quasi* lessee of tithes by parol, cannot maintain a suit for them, without making the *quasi* lessor a party in the suit. *Henning* v. *Willis*, Gwill. 898. See also Ellis on Suits for Tithes in Equity, 25.

GREAT TITHES.

(*b*) If it be of the great tithes only, say,

" all and all manner of tithes of corn, grain, and hay, and other great or rectorial tithes and tenths which shall arise, &c." *as above.*

as well great as small, which shall arise, grow due, or belong to the said [*lessor*], within the parish of —— aforesaid, as rector of the same parish or otherwise howsoever(*c*); To HOLD the same unto the said [*lessee*], his executors, administrators, and assigns, for the *term of —— years, *if* the said [*lessor*] should so long live, and continue rector(*d*) of the said parish; AT the yearly rent of ——

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

Term.

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Rent.

(*c*) If of the glebe, &c. also add,

GLEBE, &c.

"*and also*, ALL THOSE the glebe lands belonging to the rectory of the said parish, and the orchard adjoining to the parsonage-house, together with the barn, hog-sty, and cart-house, and the yard where they stand, also belonging to the said rectory or parsonage, with their appurtenances, (EXCEPT the timber and timber trees, and the loppings thereof, and the loppings of all other trees)."

Except timber, &c.

If it be for a lease of the tithes of a particular farm, say,

"for or in respect of ALL THAT farm, with the several closes, pieces, or parcels of land, with the appurtenances, called —— farm, situate in the said parish of ——, and now in the occupation of the said [*lessee*], as tenant thereof under [*landlord*], and the cattle, oxen, sheep, pigs, poultry, farm-yard and dairy, and other titheable animals and things, being, arising, or growing thereon."

TITHES OF A PARTICULAR FARM.

(*d*) If a parson make a lease for *years* of his tithes, it is *implied* by law, "if he so long continue parson." *Wheeler* v. *Heydon*, Cro. Jac. 328. 14 Vin. Abr. 68, pl. 11. 7 Bac. Abr. 19, Gwill. ed. *Verdict* (M). And the lease determines by his deprivation or resignation; and therefore, although it would be an addition in words, yet it is not any in substance. 2 Roll. Abr. 718, pl. 10; 21 Vin. Abr. 462, *S. C.* So, if a parson make a lease for years if he so long live, *with covenants* for enjoyment accordingly, as his death before the expiration of the term determines the lease, there will be no breach of the covenant; but if he resign, or do any other act whereby he loses the living, an action of covenant will lie against him. *Rudge* v. *Thomas*, Roll. Rep. 403, 404; 2 Bulst. 202; 19 Vin. Abr. 148, n. pl. 1. Therefore it is usual to add this clause, "and shall so long continue parson or rector," which leaves him at liberty to avoid the lease by resignation or otherwise; because the lease is to continue no longer than whilst he continues parson; and in the mean time leaves it in his election, by any of these means, to determine the lease. *Wheeler* v. *Heydon*,

Continuance of lease of tithes, without covenants;

with covenants.

The reason of introducing "if he should so long continue parson."

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

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pounds, clear of all taxes and deductions whatsoever, to be paid half-yearly, on the —— day of —— and the —— day of ——; and the first half-yearly payment to be made on *the —— day of —— now next (*e*). WHICH said indenture of lease, and a counterpart thereof, shall be prepared by the solicitor of the said [*lessor*], and shall contain, in addition to all usual and accustomed covenants on the part of the said [*lessee*], his executors, administrators, and assigns, in leases of the like nature; a covenant to repair, sustain, and uphold the chancel of the parish church of —— aforesaid during the said term (*f*); *and also* to exonerate, discharge, and save harmless the said [*lessor*], his executors and administrators therefrom (*g*); *and also* (*h*)

Lease to be prepared by lessor's solicitor, and to contain usual covenants;

and to repair chancel of parish church.

To indemnify lessor therefrom.

Unjust deprivation.

Brownl. 125. 4 Bac. Abr. 94, Gwil. ed., *Leases* (F). And if a lease be made by a parson "*for so long* as he shall continue parson," and he is afterwards *deprived unjustly*, the lease is gone and determined, and shall have no longer continuance, although afterwards the deprivation be reversed: but it would be otherwise, if it were limited to continue *for twenty-one years, if he should so long live: per Haughton*, J. and *per Doderidge*, J. by the deprivation the lease is now gone; but if he appeal from the sentence then pending the appeal, he continues parson until sentence be given. *Wheeler* v. *Heydon*, 2 Bulst. 84; 10 Vin. Abr. 355, pl. 6.

(*e*) Add clause for additional rent for breaking up glebe lands, as in page 21, *ante*.

GLEBE, &c.

(*f*) If of the glebe, &c.

To repair buildings and fences.

"*and also* to repair, amend, maintain, and keep the said barn, hog-sty, and cart-house, and the hedges, ditches, gates, pales, and fences of the said premises, in, by, and with all necessary and tenantable reparations, amendments, and cleansings whatsoever during the said term;

To cultivate lands.

and also to keep the said glebe lands in good heart and condition, according to the course of husbandry used and

Other covenants.

approved in the said parish. (*Add any other covenants agreed on, usual in agreements for leases of lands; for which see* p. 21, ante).

(*g*) " respectively"

(*h*) If the agreement be for tithes only, or if it be probable that there

a proviso, making void the said intended lease, on non-payment of the said rent twenty-one days after the same shall become due and be demanded, upon or at any time after the same twenty-one days, and not paid * when demanded, (or (*i*) on breach or non-performance of any of the covenants to be contained in the said lease on the part of the said [*lessee*], his executors, administrators or assigns, or on his or their bankruptcy or insolvency): AND THE SAID [*lessee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*lessor*], his executors and administrators, that he the said [*lessee*], his executors or administrators, will execute a counterpart of such lease, whenever the same shall be tendered; *and also* will pay the expense of preparing the same lease and counterpart, and also the expense of preparing this agreement and a duplicate hereof. AND IT IS FURTHER AGREED, that the said lease shall contain a covenant on the part of the said [*lessor*], his heirs, executors or administrators (*k*), that the said [*lessee*], his executors, administrators, or assigns, on regularly paying the said rent and performing the covenants to be contained in the said lease, shall hold and enjoy the said

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Proviso to make lease void on non-payment of rent, or breach of covenants.

Covenant by lessee to execute a counterpart of lease,

and pay the expenses of lease, counterpart, and this agreement.

Lease to contain covenant by lessor,

for peaceable enjoyment.

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may not be goods and chattels on the demised glebe, &c. sufficient to answer the distress, it may sometimes be prudent to add,

" a power or grant enabling the said [*lessor*], and his assigns, in case the said rent should be in arrear and unpaid twenty-one days after either of the said days of payment, and not paid when demanded, to enter upon and distrain the lands and tenements, goods and chattels of the said [*lessee*], his heirs, executors and administrators, and thereby to levy and raise the sum or sums which shall be then in arrear and unpaid; *and also* "

Power of distress.

(*i*) *Vide ante*, p. 58, (*e*).

(*k*) If it be the agreement, say,

GLEBE, &c.

" to allow the said [*lessee*], his executors and administrators, from and off the said premises, competent and sufficient rough timber for repairing and amending the chancel of the said parish church, and all the erections and buildings on the said premises; *and also*"

To allow rough timber.

FOR LEASE OF TITHES, WITH OR WITHOUT GLEBE LANDS.

tithes (*l*) during the said term, if the said [*lessor*] should so long live and continue rector of the said parish, without any disturbance whatsoever, by the said [*lessor*] or any other person (*m*). In witness, &c.

(*l*) "lands and premises,"

[(*m*) For precedents of leases of tithes; *vide post*, Vol. 4, pp. 553, 556, Vol. 5, p. 129.]

[78]

PURCHASE OF FEE SIMPLE.

AGREEMENT *for the* Sale *of a Freehold Estate; a short Form.*

Parties.

ARTICLES OF AGREEMENT made and entered into this —— day of ——, 18—; Between [*vendor*], of &c., for himself, his heirs, executors, and administrators, of the one part; and [*purchaser*], of &c., for himself, his heirs, executors and administrators, of the other part.

Vendor agrees to sell.

First, the said [*vendor*] doth hereby agree with the said [*purchaser*], to sell to him, All that messuage, &c. situate at, &c. with their appurtenances, for the sum of —— pounds: *and* that he the said [*vendor*] will, within *(one month)* from the date hereof, at his own expense, make and deliver to the said [*purchaser*], or his solicitor, an abstract of the title of the said [*vendor*] to the said [*parcels*]; *and also* that the said [*vendor*] or his heirs, and all other necessary parties, shall and will, on or before the —— day of —— next, on receiving from the said [*purchaser*], his executors or administrators, the said sum of —— pounds, at the costs and charges of him the said [*purchaser*], his heirs, executors, administrators, or assigns, execute a proper conveyance, for conveying and assuring the fee-simple and inheritance of the said mes-

To deliver abstract.

And that necessary parties shall execute conveyance.

(*a*) See this clause more fully stated in the next precedent.

suage and premises, with their appurtenances, unto the said [*purchaser*], his heirs, appointees, or assigns, free from all incumbrances by the said vendor or any of his ancestors; with the usual and other proper covenants according to the circumstances of the title, for the title, for quiet enjoyment, and for further assurance (*a*): AND THE SAID [*purchaser*] hereby agrees with the said [*vendor*], that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will, on the execution of *such conveyance as aforesaid, pay the sum of —— pounds unto the said [*vendor*], his executors or administrators: AND IT IS HEREBY FURTHER AGREED by and between the said [*vendor*] and [*purchaser*] (*b*), that the conveyance to the said [*purchaser*], his heirs, appointees, or assigns, shall be prepared by and at the expense of the said [*purchaser*], and that the same shall be settled and approved of on the parts of the said [*vendor*] and [*purchaser*], by their respective counsel or solicitors: *and* that each of them the said [*vendor*] and [*purchaser*] shall pay the fees of his own counsel, and the charges of his own solicitor: *and* that all rates, taxes, and outgoings, payable for or in respect of the premises, to the —— day of ——, shall be paid and discharged by the said [*vendor*], his executors or administrators; (*and lastly*, that (*c*), if the said [*vendor*] should not deliver an *abstract of his title to the said [*purchaser*] or his solicitor, before the expiration of *(one calendar month)* from the date hereof, or should not deduce a

PURCHASE OF FEE SIMPLE.

Purchaser agrees to pay consideration money.

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Conveyance to be at purchaser's expense;

and be approved by the counsel or solicitor of each party, at his own expense.

Vendor to pay rates, &c. to a given day.

If abstract should not be delivered, and title deduced, within a given

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(*a*) See this clause more fully stated in the next precedent.

(*b*) "that the expense of any fine, recovery, covenant for the production of title deeds, release, assignment, or surrender of any incumbrances, and of outstanding terms not already assigned to attend the inheritance, and which respectively shall be requisite or necessary to perfect the title to the said messuage and premises, shall be levied, suffered, made, and prepared respectively, by and at the expense of the said [*vendor*]; *and also*,"

Fines, &c. to be at vendor's expense.

(*c*) A provision may also be inserted in agreements, making time the essence of the contract, in case the purchase money be not paid at the day appointed; but of course clauses making agreements void if a title be not made, or the purchase money paid by a stated time,

Time the essence of the contract.

PURCHASE OF FEE SIMPLE.

time, agreement to be void.

good and marketable title to the said messuage and premises, before the said —— day of ——, then, and in either of the said cases, immediately after the expiration of the said *(one calendar month)*, or the said —— day of ——, as the case may be, this present agreement shall (at the option of the said [*purchaser*], his heirs or assigns,) be utterly void to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred; it being the true intent and meaning of the parties hereto, that in the event aforesaid, execution of this agreement shall not be enforced against the said [*purchaser*] by any court of equity, notwithstanding any rule, if such rule there be, that time cannot be made the essence of a contract(*d*), or any other rule or maxim whatsoever). IN WITNESS whereof the said parties have hereto set their hands the day and year first above written.

Declaration that time shall be the essence of the contract.

[*Vendor*].
[*Purchaser*].

WITNESS to the signing by the above named [*vendor*] and [*purchaser*].
[*Witness*].

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should never be inserted unless it be the *express intention* of the parties.

When time is not the essence of the contract.

Where time is not deemed material, clauses to the following effect should be inserted, instead of the above in parentheses:

Purchaser to receive the rents from a given time.

If consideration money be not paid on the day fixed, purchaser to pay interest.

" that the said [*purchaser*] and his heirs shall have, receive, and take the rents and profits of the said messuage and premises, from the —— day of —— next, for his and their proper use; *and* that if the said conveyance should not be executed by the necessary parties, and the said purchase money paid, on or before the said —— day of ——, then and in such case the said [*purchaser*], his heirs, executors, or administrators, shall, from the same —— day of ——, pay interest for the said purchase money, unto the said [*vendor*], his executors or administrators, after the rate of —— pounds *per centum per annum*."

(*d*) It may now be considered as the settled doctrine of the Court of Chancery, that, by the terms of the agreement, time may be made of the essence of the contract. By Sir John *Leach*, V. C. *Reynolds* v. *Nelson*, 6 Madd. 26. See Sugd. Vend. 7 Ed. 375.

AGREEMENT *for the* PURCHASE *of a* FREEHOLD *Estate.*

PURCHASE OF FEE SIMPLE.

ARTICLES OF AGREEMENT indented, made, and entered into the —— day of ——, 18—, BETWEEN [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part. Parties.

FIRST, the said [*vendor*], in consideration of the sum of —— pounds, to be paid to him by the said [*purchaser*], pursuant to the covenant and agreement hereinafter in that behalf contained, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his heirs and assigns, by these presents; *that* he the said [*vendor*], shall and will within —— months from the date hereof, at his own expense, cause and procure to be made and delivered unto the said [*purchaser*], his solicitor, or agent, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*vendor*] unto the fee-simple and inheritance of the messuages, &c. hereinafter mentioned; and if the counsel of the said [*purchaser*] should be of opinion (*a*) that the said [*vendor*] has a good title thereto, then that he the said [*vendor*], his heirs or assigns, and all other necessary parties, shall and will, on or before the —— day of —— now next ensuing, by good and sufficient conveyances (*b*) and assurances in the law, and with such covenants as are

Covenant by vendor to deliver abstract and make a conveyance within a limited period.

(*a*) *i. e.* such a title as a court of law or equity would take to be a good title; for if the purchaser's counsel should disapprove of a good and clear title, yet the purchaser would be bound to accept it. *Argu. Lewis* v. *Lechmere*, 10 Mod. 505.

If the title be good, the purchaser is bound, although his counsel disapproves of it.

(*b*) If it should be necessary to levy a fine or suffer a recovery, it should be levied or suffered, &c. at the vendor's expense: see form of the agreement for that purpose, *ante*, 79.

Fines, &c. at vendor's expense.

PURCHASE OF FEE SIMPLE.

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hereinafter mentioned, convey and assure, or cause to be conveyed * and assured unto, and to the use of the said [*purchaser*], his heirs and assigns, or to such person or persons, or to such use or uses, as he or they shall direct or appoint, at his and their own proper costs and charges,

Parcels.

ALL THOSE, &c. *(describe the estate pretty minutely)* containing by estimation, &c. *together* with the rights, members, and appurtenances to the said messuages (*c*), &c. and to every or any of them belonging, or in anywise appertaining (*d*).

Covenant from purchaser to pay purchase money, upon having conveyance executed.

IN CONSIDERATION whereof, the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*vendor*], his executors, administrators, and assigns, *that* he the said [*purchaser*], his heirs, executors, or administrators, shall and will, upon the —— day of ——, now next, and upon the making and executing such conveyances and assurances as aforesaid, pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, at —— in the county of ——, the said sum of —— pounds in full, for the absolute purchase of the said messuages and hereditaments, but without any interest in the mean time for the same purchase money:

Covenants to be contained in conveyance on the part of vendor.

AND IT IS HEREBY AGREED, that in such conveyances and assurances, so to be made by the said [*purchaser*], his heirs or assigns as aforesaid, there shall be contained covenants on the part of the said [*vendor*], his heirs, executors, and administrators (*e*), *that*, notwithstanding any act done by him

For title against his own acts;

Free from land-tax.

(*c*) If the land-tax has been redeemed, add,

"freed and discharged from the land-tax,"

Exception.

(*d*) If a pew in a church, annexed to the house, a close of land, a right of way, or any other thing, be intended to be reserved, the exception may be noticed here.

Covenants to be contained in conveyance should be mentioned.

(*e*) It is prudent to insert in the contract what covenants the vendor is to enter into, as it prevents much delay in finally settling the conveyance; but at the same time the form, *ante* 78, may be sometimes preferred, because, until the title has been investigated, it is impossible to know whether the covenants ought to be restrained or general. As to the usual covenants, on the sale of an estate in fee simple, *vide ante*, 33, n.

the said [*vendor*] (*f*), he the said [*vendor*], or his heirs, is or are, at the time of the execution of such conveyances, seised of or well entitled to, the inheritance in fee-simple in possession, of and in the said premises so agreed to be conveyed by him as aforesaid; *and* that he or they hath or have good right to convey the same unto or to the use of the said [*purchaser*], his heirs, appointees, or assigns, for ever; *and* that the said [*purchaser*], his heirs, appointees, and assigns, shall and lawfully may, peaceably and quietly, enjoy the same, without any interruption of, from, or by, the said [*vendor*], or his heirs, or any other person or persons whomsoever, (claiming (*g*) under him or them (*h*)); *and* free from all incumbrances made, done, or committed by the said [*vendor*], or by any other person or persons whomsoever (claiming (*g*) under him or them (*h*) (*i*));

PURCHASE OF FEE SIMPLE.

Good right to convey.

(*f*) If the state of the title require that the covenants should be general, add,

General covenants for title.

"or by any other person or persons whomsoever,"

If the covenant be restrained to the acts of ancestor, &c. say,

Against acts of ancestor, &c.

"or by [*ancestor, &c.*] late of, &c. deceased,"

(*g*) If the covenants are to be general, omit the part in parentheses.

General covenants.

(*h*) If the covenants are restrained to the acts of the vendor, and his ancestor, &c. add,

Against acts of vendor and his ancestor, &c. only.

"or under (the said [*ancestor, devisor, &c.*] deceased; (*or* any of his ancestors;)"

(*i*) If the estate be subject to a fee farm rent, mortgage, annuity, rent charge, or other incumbrances, they may be mentioned here, thus,

Incumbrances excepted, and to be discharged by purchaser.

"a fee farm rent payable to the lord of the manor of —— out of the said premises only excepted;"

Fee farm rent.

"a mortgage of the said premises, (in fee by indentures of lease and release, bearing date the —— and —— days of ——, 18—, (*or*, by demise for —— years, by indenture bearing date the —— day of ——, 18—,) and made between the said [*vendor* or *mortgagor*] of the one part, and [*mortgagee*] of &c., of the other part, for securing the payment of the sum of —— pounds and interest, only excepted; *and* which said sum of —— pounds, and the

Mortgage, in fee.

or for years.

PURCHASE OF FEE SIMPLE.

For further assurance.

and that he the said [*vendor*], and his heirs, and all and every other person or persons, lawfully or rightfully claiming, or to claim, any estate, right, title, or interest, whether legal or equitable, of, in, to, or out of, the said premises hereby agreed to be conveyed, ((*k*) under or in trust for him or them (*l*)), shall and will, at the request and expense of the said [*purchaser*], his heirs or assigns, make, do, and execute any act, for better conveying and assuring the said premises, so agreed to be sold and conveyed as aforesaid, unto or to the use of the said [*purchaser*], his heirs, appointees, or assigns, for ever; *so as such further assurances contain no further covenants, than against the person or persons who shall be request-

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interest thereon from the —— day of —— now next, it is hereby agreed shall be paid and discharged by the said [*purchaser*], his heirs, executors, or administrators, who shall indemnify the said [*vendor*], his heirs, executors, and administrators, therefrom;"

Annuity.

"an annuity, (*or* rent charge), of —— pounds, payable to —— for his life, out of the said premises, and secured by indenture bearing date, &c. and made, &c. and the term, estate, and interest thereby created, only excepted; *and* which said annuity, (*or* rent charge), from, &c." *as above.*

Leases.

"other than and except such leases for (*twenty-one*) or any lesser number of years, as the said [*vendor*] hath already granted of the said premises, or any part thereof, at full improved rents reserved, to be payable yearly or oftener, during the continuance of the estates granted by the same leases respectively; (*or* the leases and agreements in writing for leases, of the present tenants or occupiers of the said premises); *and* the terms, if any, outstanding, in trust for the said [*vendor*], his heirs, appointees, and assigns."

Agreements for leases.

Outstanding terms.

General covenants.

(*k*) If the covenants are to be general, omit the part in parentheses.

Covenants extended to acts of vendor's ancestors.

(*l*) If the covenants are to extend to the acts of the vendor's ancestors, &c. add,

"or under or in trust for any of his ancestors;"

ed to make the same, or against his, her, or their heirs; and so as the party or parties who shall be requested to make such further assurances be not compellable to travel from the usual place of his, her, or their abode, for the doing thereof (*m*). AND IT IS HEREBY AGREED, by *and between the said parties, that all arrears of rent and other profits arising from the said estate and premises, or any

PURCHASE OF FEE SIMPLE.

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Vendor to receive rents to a given time.

(*m*) If the premises are part of a larger estate, or part of a family estate, and it is probable that the title deeds also relate to property of greater value, it may be prudent to insert the following provision; although, in the absence of an express stipulation to the contrary, the vendor would be liable to the expense of attested copies, not of all the deeds, but only so far back as to make a title; *Dare* v. *Tucker*, 6 Ves. 460; and as a necessary consequence, it seems, the expense of the deed of covenant to produce the originals. *Berry* v. *Young*, 2 Esp. N. P. C. 640, n.

Purchaser entitled to attested copies of title deeds, and covenant to produce the originals, when there is no contrary stipulation.

"AND IT IS HEREBY AGREED, by and between the said parties, that such of the title deeds or writings concerning the said premises, as shall be found to relate to other property of the said [*vendor*], of equal or greater value, shall be retained by him on his delivering, at his own expense, true and attested copies of them duly stamped; and on his entering into the usual covenant, to be prepared by and at his own expense, for producing the originals; but such covenant nevertheless to be void, if the said [*vendor*] should afterwards sell any part of the property retained by him, and deliver the same deeds and writings to the purchaser thereof, and procure such purchaser to enter into the same or the like covenants."

Vendor to retain title deeds, and at his own expense deliver purchaser attested copies, and covenant to produce originals.

If the premises sold constitute the largest part of the estate to which the title deeds relate, say,

"AND IT IS HEREBY AGREED, by and between the said parties, that such of the title deeds or writings concerning the said premises, as shall be found to relate to other property of the said [*vendor*], of inferior value, shall be delivered to the said [*purchaser*], and the said [*vendor*] shall be entitled to have, at his own expense, such copies of them, either examined copies unstamped, or attested copies, duly stamped, as he shall think fit; and also the usual covenant by the said [*purchaser*], for producing the origi-

Purchaser to have title deeds, but vendor to have copies, and a covenant to produce them at his own expense.

PURCHASE OF FEE SIMPLE.

part thereof, which now are, or which on or before the said —— day of —— now next, shall incur, accrue, or become due, shall belong to, and be received by, the said [*vendor*], his heirs, executors, or administrators; *and* that he and they shall have full power and free liberty to get in and receive the same accordingly (*n*). (AND IT IS

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nals, to be prepared by and at the expense of the said [*vendor*]; but such covenant nevertheless to be void, if the said [*purchaser*] should, &c." *as above.*

See further, as to *Attested Copies*, INDEX to the PRECEDENTS, title, COVENANT TO PRODUCE TITLE DEEDS.

If the premises be subject to a mortgage, or any other incumbrance, in order to save the purchaser the expense of a long conveyance, it is the usual practice to add a similar provision to the following:

Vendor to be at the expense of deeds discharging incumbrances.

"AND IT IS HEREBY FURTHER AGREED by and between the said parties, that if the said premises be subject to any incumbrance, it shall either be paid off or otherwise satisfied by the said [*vendor*], and the said premises at his own expense be effectually released and discharged therefrom, previously to the conveyance to the said [*purchaser*]; or such release or discharge shall be made by separate and distinct deed or deeds, to be prepared by and at the expense of the said [*vendor*], and to be approved by the counsel or solicitor of the said [*purchaser*], at his own expense, but the execution thereof to be attested by the solicitor or agent of the said [*purchaser*], at the expense of the said [*vendor*]."

Some of the consequences of the contract.

(*n*) Equity looks upon things agreed to be done, as actually performed; consequently, when a contract is made for the sale of an estate, equity considers the vendor as a trustee of the estate sold for the purchaser and his heirs, and the purchaser as a trustee of the purchase money for the vendor and his executors; the vendor entitled to interest for his money, and the purchaser entitled to the rents of the estate from the time stipulated for completing the contract: but as the rate of interest in equity does not appear to be fully settled, it should be provided for, *ut ante*, 80; yet in the case of timber to be taken at a valuation, interest on the purchase money for the timber will only commence from the valuation. The vendee being, in contemplation of equity, actually seised of the estate, he must

PURCHASE OF FEE SIMPLE.

Purchaser to pay the expenses of an inclosure act.

HEREBY AGREED AND DECLARED between and by the said parties to these presents, that so much of the expenses attending the soliciting, obtaining, and passing, an act of Parliament, made and passed in the —— year of his present Majesty's reign, intituled, "*An act for dividing, allotting, and enclosing a certain large open tract of land within the said manor of —— in the county of ——*;" the surveying, planning, dividing, and allotting the said tract of land, and the preparing, making, and enrolling the general award of the commissioners in and by the same act named and appointed in pursuance of the said act, and the instruments of election in the said act mentioned, and of all other the charges and expenses attending the execution of the said act, as shall be or become payable, for or on account of any allotment of the said tract of land, for or in respect of the said premises hereby agreed to be sold and conveyed by the said [*vendor*], as aforesaid, shall be borne and paid by the said [*purchaser*], his heirs and assigns.) IN WITNESS, &c.

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bear any loss which may happen to the estate between the agreement and conveyance, and will be entitled to any benefit which may accrue to it in the interim; therefore, a purchaser of property liable to be destroyed by fire, should, immediately after the contract, ascertain that it is properly insured. The purchaser may devise the estate before the conveyance, and the devisee will be entitled to have the estate paid for out of the personal estate of the purchaser; but if the purchaser should wish the estate to pass under a general devise, in a will already made, the will should be republished; and a subsequent conveyance to the purchaser, or to a trustee for him, will not operate as a revocation, although the legal estate will descend to the heir at law; yet he will in equity be deemed a trustee for the devisee: but it seems that a devise of a freehold estate contracted for is revoked by a subsequent conveyance to the usual uses to prevent dower †. If, however, it were stipulated in the contract, *ut ante*, 81, that the estate should be conveyed "to the purchaser in fee, or to such uses as he should appoint," a conveyance to uses, to prevent dower, would not, it has been supposed, operate as a revocation. Sug. Vend. 154, 162, 424, 429, 5th ed., to which excellent work the reader is referred for information respecting "The law of vendors and purchasers of estates."

[† On this point see *Rawlins* v. *Burgis*, 2 Ves. & Bea. 382; and other cases cit. 1 Jarm. Pow. Dev. 561.]

[SALE OF MANOR &c. IN FEE, BY TRUSTEES AND CESTUIS QUE TRUST, TO TWO PURCHASERS.

AGREEMENT *for the Sale of a* MANOR, ADVOWSON, TITHES, MESSUAGES, *&c.* IN FEE, *by three* TRUSTEES *under a Will, one of whom is one of the* Cestuis que Trust, *and in which the other* Cestuis que Trust *join, to two Persons; the Timber to be taken at a Valuation, if not exceeding a certain Sum; Stock transferred to a third Person by way of Deposit; and Agreement by the Purchasers to allow the Tenants a Compensation for Crops, &c.*

Timber at valuation.

Stock transferred as deposit.

Purchasers to allow compensation for crops.

ARTICLES OF AGREEMENT made, concluded, and agreed upon, this —— day of ——, in the year 18—; BETWEEN [*three trustees*] of &c., which said [*trustees*] are devisees and trustees, named in the last will and testament of [*testator*], late of &c., deceased; the said [*one of the trustees, and also one of the cestuis que trust*] in his own right, [*husband of one of the cestuis que trust*], of &c., and [*wife*] his wife, and [*the other cestui que trust*], of &c., of the one part; and [*purchasers*], both of &c., of the other part.

Parties.

WHEREAS the said [*trustees*], as devisees and trustees as aforesaid, and the [*trustee and cestui que trust*] in his own right, [*husband of cestui que trust*], on behalf of himself and the said [*wife*] his wife, and the said [*other cestui que trust*], have contracted with the said [*purchasers*] for the absolute sale to them of the manor or lordship of ——, in the said county of ——, with the rights, members, and appurtenances thereunto belonging or appertaining; and of the advowson of the vicarage of —— aforesaid; and of the several messuages, farms, lands, tenements, tithes, and hereditaments, hereinafter mentioned, with their appurtenances, and the inheritance thereof

Recital of contract for sale.

SALE OF MANOR &c. IN FEE, BY TRUSTEES AND CESTUIS QUE TRUST, TO TWO PURCHASERS.

in fee-simple in possession, free from *incumbrances (except as hereinafter mentioned), at or for the price or sum of —— pounds, exclusive of the timber thereon, which is to be taken at a valuation, as hereinafter mentioned: Now THESE PRESENTS WITNESS, that for and in consideration of the sum of —— pounds of lawful money of Great Britain; *and also,* of such further sum of like lawful money, not exceeding the sum of —— pounds, as the timber standing and growing upon the said hereditaments shall be valued or estimated at, in manner hereinafter mentioned, to be paid to the said [*trustees*], [*husband*] and [*wife*] his wife, and [*other cestui que trust*], or such person or persons as they shall respectively direct or appoint, under or in pursuance of the agreement hereinafter for that purpose contained, on the part and behalf of the said [*purchasers*]; *they* the said [*trustees*], in their capacities of devisees and trustees as aforesaid; and also the said [*trustee and cestui que trust*], in his own right, and the said [*husband*], on the behalf of himself and the said [*wife*] his wife, and the said [*other cestui que trust*], in her own right, do hereby respectively covenant, promise, and agree to and with the said [*purchasers*], their heirs and assigns, and to and with each of them, *that* the said [*trustees*], [*trustee and cestui que trust*], [*husband*], and [*wife*] his wife, and [*other cestui que trust*], their heirs, executors, or administrators, shall and will, on or before the —— day of —— now next ensuing the date hereof, to the satisfaction and good liking, and with the approbation of the said [*purchasers*], their heirs or assigns, or their counsel, make out and establish a good and clear title to the freehold and inheritance in fee-simple, of and in, and by good and sufficient conveyances and assurances in the law, to be executed by all necessary and proper parties, well and sufficiently convey and assure, ALL THAT the manor or lordship of ——, with its rights, members, and appurtenances, situate in, and being in the county of ——; *and also,* ALL THAT the advowson, right of patronage and presentation, of and to the vicarage of —— aforesaid; *and also,* ALL and singular the messuages, farms, lands, tenements, and hereditaments, mentioned and described in the particular or schedule hereunder *written; *and also,* all

Testatum.

Parcels.

SALE OF MANOR &c. IN FEE, BY TRUSTEES AND CESTUIS QUE TRUST, TO TWO PURCHASERS.

other the messuages, farms, lands, tenements, tithes, and hereditaments whatsoever, of them the said [*trustees*] and [*cestuis que trust*], or any of them, or of or to which they or any of them are or is seised or entitled, at law, or in equity, under or by virtue of the will of the said [*testator*], and situate, lying, and being at —— aforesaid, with their and every of their appurtenances; and the inheritance thereof, in fee-simple, unto and to the use of the said [*purchasers*], their heirs and assigns, or otherwise as they shall direct or appoint, freed and discharged of and from all charges and incumbrances whatsoever, *except* such as are mentioned in the schedule or particular hereunder written: AND IT IS HEREBY AGREED AND DECLARED, between and by the said several parties hereto, that all the timber and timber-like trees, standing, growing, and being upon the said manors, farms, lands, hereditaments, and premises, so contracted to be purchased as aforesaid, shall be valued and appraised by two indifferent persons; one of them to be nominated and appointed by and on the behalf of the said [*trustees*] and [*cestuis que trust*]; and the other of such two indifferent persons, to be nominated and appointed by and on the behalf of the said [*purchasers*]: AND in case such two persons so to be nominated and appointed as aforesaid, should not agree in the estimate or value of such timber and timber-like trees, then the same shall be valued and appraised by such one indifferent person as the first two nominees shall for that purpose appoint umpire in the premises. AND the estimate or valuation of such two persons, or of their umpire, to be respectively nominated and appointed as aforesaid, shall be final and conclusive upon the said parties hereto: AND in consideration of the agreement hereinbefore contained, on the respective parts of the said [*trustees*] and [*cestuis que trust*], they the said [*purchasers*] do, and each of them doth, hereby covenant, promise, and agree, to and with the said [*trustees*] and [*cestuis que trust*] respectively, and their respective heirs and assigns, *that* they the said [*purchasers*] their heirs, executors, or administrators, or some or one of them, shall and will, on or before the —— day of —— now next ensuing, upon the title to the said manor, advowson, messuages, farms, lands, tenements,

Timber to be valued by arbitrators.

And if they disagree, by umpire.

Covenant by vendees to pay the purchase money;

SALE OF MANOR &c IN FEE, BY TRUSTEES AND CESTUIS QUE TRUST, TO TWO PURCHASERS.

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tithes, and hereditaments, being approved of by the coun-*sel of the said [*purchasers*], their heirs or assigns, and upon the execution of such conveyances and assurances, as are hereinbefore agreed to be made and executed of the same premises, pay, or cause to be paid, unto the said [*trustees*] and [*cestuis que trust*], or such other person or persons as upon the investigation of the title shall appear to be entitled to receive the same, the full sum of [*purchase money*] pounds, of like lawful money as aforesaid: *and also*, such further sum or sums of money, not exceeding the sum of —— pounds, as the value of the timber, and timber-like trees shall, according to such appraisement thereof as aforesaid, amount unto: *and also*, that they the said [*purchasers*], their heirs, executors, or administrators, shall and will bear, pay, and sustain the whole of the costs, charges, and expenses, to be occasioned by, or otherwise attending, the valuation and appraisement, so to be made of the said timber, and timber-like trees, as aforesaid: PROVIDED ALWAYS, *and it is hereby agreed and declared*, that in case the value of the timber and timber-like trees shall, according to such appraisement thereof, exceed the sum of —— pounds, *then* the said [*purchasers*], shall have the benefit of such excess, and the sum of —— pounds shall be considered as the full price of the whole of such timber, and timber-like trees: BUT *nevertheless it is agreed*, that in case the value of the said timber and timber-like trees should, according to such appraisement, be less than the sum of —— pounds, *then* only so much money shall be paid by the said [*purchasers*], their heirs, executors, or administrators, for the price or consideration for such timber and timber-like trees, as the same shall be so actually valued and appraised at, as aforesaid: AND IT IS HEREBY AGREED AND DECLARED, between and by the said parties hereto, that the costs and expenses of preparing and executing the deeds of conveyance of the said premises, shall be borne and paid by the said [*purchasers*], their executors or administrators: BUT the costs and charges of making out the title to the said premises, and of all and every fine or fines, recovery or recoveries, and other conveyances or assurances, which shall be necessary for making good or clearing up the title, shall

the valuation of timber not exceeding a certain sum;

and the expenses attending the valuation.

Purchasers not to pay more for the timber than a stipulated sum.

Expenses of conveyances, &c. to be paid by purchaser;

—Of making out the title, by vendors.

SALE OF MANOR &c. IN FEE, BY TRUSTEES AND CESTUIS QUE TRUST, TO TWO PURCHASERS.

be borne and paid by the said [*trustees*] and [*cestuis que trust*] or some or one of them: AND IT *IS HEREBY ALSO AGREED between the said parties hereto, that they the said [*purchasers*], their heirs or assigns, shall have and be entitled to the possession of the said manor &c., with their appurtenances, upon the —— day of ——, 18—; and to receive the rents, issues, and profits thereof, from that time; and that all outgoings, for or in respect of the premises, shall be duly paid and discharged by the said [*trustees*] and [*cestuis que trust*] up to the said —— day of ——, 18—: AND they the said [*trustees*] and [*cestuis que trust*] do hereby severally undertake and agree with the said [*purchasers*], that good and sufficient notices have been duly served upon the said several tenants of the said manor &c., so agreed to be purchased as aforesaid, to quit the possession and occupancy thereof at (*Lady-day*), which will be in the year 18—; and that in consequence of such notices, such respective tenants will be compelable, on that day, to quit and deliver up the premises by them respectively holden: AND WHEREAS part of the lands so agreed to be purchased as aforesaid, hath been sown with wheat, other part thereof with clover and other grass seeds, and fallowing and other acts of cultivation have been done on other parts thereof, by the respective tenants thereof, which they cannot take or receive the benefit of, in consequence of such notices so given them to quit as aforesaid, NOW THE SAID [*purchasers*] do hereby respectively agree with the several other persons parties hereto, that in case the said [*purchasers*] shall require the tenants of the said several farms, lands, hereditaments and premises, or any of them, to quit or deliver up the possession of the premises by them respectively holden or occupied, pursuant to the said notices to them respectively given for that purpose as aforesaid, then, and in that case, they the said [*purchasers*], their heirs, executors, or administrators, shall and will pay unto each of the tenants or occupiers of the same farms, lands, hereditaments, and premises, who shall be so required to quit or surrender up the premises by them respectively holden or occupied, such sum or sums of money as shall be considered a fair and reasonable

Purchasers to have possession on a given day.

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Undertaking by vendors, that proper notices have been served on the tenants to quit.

Recital that part of the lands has been sown with seeds, &c.

Agreement by vendors to pay for same according to valuation.

satisfaction to him for the sowing, making, fallowing, and doing other acts of cultivation as aforesaid; the amount *of such sum or sums of money to be ascertained by two indifferent persons, the one of them to be named and appointed by the tenant of such lands and premises, and the other by the said [*purchasers*], their heirs or assigns; and in case such two persons cannot agree to determine the amount of such sum or sums of money, then the amount thereof shall be ascertained by such one person as the two first nominees shall appoint umpire for that purpose, whose determination shall be final: AND WHEREAS the said [*purchasers*] have, previously to the execution of these presents, with the consent and approbation of the said [*trustees*] and [*cestuis que trust*] transferred —— Consolidated three pounds *per centum* Annuities, into the name of [*trustee*], of &c., as by reference to the books of the governor and company of the Bank of England will appear: Now *it is hereby agreed and declared* between and by the said parties hereto, that the said —— Consolidated three pounds *per centum* Annuities, are and were so transferred into the name of the said [*trustee*], at the request and with the consent of the said [*trustees*] and [*cestuis que trust*], as a deposit, and to the intent that the same may be applied in part payment of the aforesaid purchase money or sum of —— pounds; and for that purpose it is hereby further agreed and declared, that upon the title to the said manor, messuages, &c. being approved by the counsel of the said [*purchasers*], their heirs or assigns, and upon the execution of the conveyance or assurance hereinbefore agreed to be made and executed of the same premises, he the said [*trustee*] shall sell and dispose of the said —— Consolidated three pounds *per centum* Annuities, and shall pay the money arising by such sale, (after deducting the usual commission for brokerage), unto the said [*trustees*] and [*cestuis que trust*], or such of them, or such other person or persons, as shall appear to be entitled to receive the aforesaid purchase money, in or towards payment and satisfaction of so much of the aforesaid purchase money or sum of —— pounds: PROVIDED ALWAYS, that in the mean time, and until the sale of the said —— Consolidated three pounds *per centum* Annuities, as aforesaid, the dividends and in-

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Recital of transfer of stock.

Declaration that same was in trust as a deposit in part of purchase money.

But purchasers to be entitled to intermediate interest on deposit.

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terest thereof shall be paid to and received by the said [*purchasers*]: PROVIDED ALWAYS, that in case the said contract so enter*ed into for the sale of the said manor, &c. and premises as aforesaid, should be relinquished or abandoned by the said several parties hereto; or in case the same cannot be carried into execution by reason of any defect of title, or otherwise, *then* the said [*trustee*], shall stand possessed of and interested in the said —— Consolidated three pounds *per centum* Annuities, IN *trust* for the said [*purchasers*], their executors, administrators and assigns. IN WITNESS, &c.

If contract cannot be carried into effect, deposit to be held in trust for purchasers.

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THE FIRST SCHEDULE to which the above-written agreement refers.

THE SECOND SCHEDULE to which the above-written agreement refers.

FOR SALE OF AN INFANT'S ESTATE IN FEE.

AGREEMENT *for the Sale of an* INFANT'S ESTATE *in fee; and* COVENANT *that the Infant, or his Heirs, when competent, shall convey; and that a* MORTGAGEE *for Years shall assign his Security to the Purchaser: and that, in case of the Infant's Default, a Sum shall be paid by way of liquidated Damages* (*a*).

Parties.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—, BETWEEN

(*a*) In cases of this kind it is often advisable to have a private act of Parliament, which fully effectuates the intention of the parties immediately, without any conveyance from the heir; but a full equivalent must be settled on the infant, and it must clearly appear that he will be benefited by the act. 2 Bla. Com. 345; 5 Cru. Dig. 8, 2d ed.; and see the dissertation, *infra*, on PRIVATE ACTS OF PARLIAMENT. "III.—*The purposes for which private acts of Parliament are usually obtained.*" And see the form of such an act, *infra*, INDEX, tit. "ACT OF PARLIAMENT."

[*vendor*], of &c., and [*other vendor*], of &c., widow and relict of [*ancestor*], late of &c., deceased, of the one part; and [*purchaser*], of &c., of the other part. FOR SALE OF AN INFANT'S ESTATE IN FEE.

WHEREAS the said [*ancestor*], deceased, departed this life in or about the month of ——, 18—, intestate, leaving [*infant*], an infant now of the age of —— years or thereabouts, his eldest son, and one daughter, and two *younger sons. AND WHEREAS the said [*ancestor*], deceased, was at the time of his death seised in fee-simple of the messuage, lands, and hereditaments hereinafter more particularly described, *subject* to a mortgage thereof, made for a term of —— thousand years to [*mortgagee*], for securing to her —— thousand —— hundred pounds, and interest; which mortgage has since been assigned to the said [*assignee of mortgagee*], for securing to him the like sum of —— thousand —— hundred pounds and interest. AND WHEREAS, upon the death of the said [*ancestor*], the father, the said messuage, lands, and hereditaments descended to and became vested in the said [*infant*], the infant, as the heir at law of the said [*ancestor*], deceased, *subject* to the said term of —— thousand years, and the principal and interest monies thereby secured. AND WHEREAS the said [*vendors*] being of opinion that it would be beneficial to the said [*infant*], the infant, if the said messuage, lands, and hereditaments, were absolutely sold, they have entered into such agreement for the sale thereof to the said [*purchaser*], as is hereinafter mentioned: NOW THESE PRESENTS WITNESS, that the said [*vendors*], in consideration of the sum of —— thousand pounds, to be paid by the said [*purchaser*] in the manner hereinafter mentioned, do, and each of them doth hereby, jointly and severally, and for their and each of their heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his heirs, executors, administrators, and assigns, in manner following, that is to say: That the said [*infant*], the infant, within six calendar months next after he shall attain the age of twenty-one years, or in case of his death in the mean time, the heir or heirs at law of the said [*infant*], the infant, within six calendar months next after he, she, or they, shall be capable by law of making and exe-

Recital of ancestor's intestacy, and infancy of his heir;

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ancestor's seisin in fee subject to mortgage for years;

descent to infant heir subject to mortgage;

and that sale would be beneficial to infant.

Testatum.

Covenant by vendors.

that infant or his heirs shall make a title at his or their own costs;

FOR SALE OF AN INFANT'S ESTATE IN FEE.

cuting a conveyance of freehold hereditaments, and all other necessary and proper parties, shall and will, at the costs and charges of the said [*infant*], the infant, or his heirs, make out a good title unto and at the expense of the said [*purchaser*], his heirs, executors, administrators, or assigns, well and effectually convey and assure, unto and to the use of the said [*purchaser*], his heirs, and assigns, or otherwise as he or they shall direct: ALL THAT messuage, dwelling-house, or tenement, *called ——, with the outbuildings, &c. together with all the rights, members, and appurtenances to the premises aforesaid belonging, free from all incumbrances whatsoever, (except as appears in and by these presents, in respect to the said term of —— thousand years, and the principal and interest monies thereby secured); *and further*, that he the said [*assignee of mortgagee*], his executors, or administrators, and every other person claiming or to claim through or under him, shall and will, upon the —— day of this present month of ——, at the expense of the said [*widow of ancestor*], (the administratrix of the said [*ancestor*] deceased), make and execute unto the said [*purchaser*], his executors, administrators, or assigns, an assignment of the said messuage, lands, and premises, for the residue which will be then unexpired, of the said term of —— thousand years, subject to such equity of redemption as shall then affect the premises; *and* shall and will by the same deed, assign and assure to the said [*purchaser*], his executors, administrators, or assigns, the said mortgage debt or sum of —— thousand —— hundred pounds, and all interest thenceforth to grow due for the same: *and also* that he, the said [*purchaser*], his heirs and assigns, shall and may at all times henceforth, until the said messuage, lands, and hereditaments, shall be conveyed to him or them as aforesaid, or until such refusal or neglect of or by the said [*infant*], the infant, or his heirs, to make and execute a conveyance of the said messuage, lands, and hereditaments, as hereinbefore mentioned, peaceably and quietly have, hold, and enjoy the same messuage, lands, and hereditaments, and every part thereof, with their appurtenances, and receive and take the rents and profits thereof to his and their own use, without any let, suit, trouble, or

and convey at purchaser's costs.

Parcels.

[*96]

That assignee of mortgagee shall assign term and mortgage money to purchaser at one of vendor's expense;

that purchaser may quietly enjoy.

FOR SALE OF AN INFANT'S ESTATE IN FEE.

interruption of, from, or by the said [*infant*], the infant, his heirs or assigns, or any other person or persons claiming or to claim by, from, or under, or in trust for him or them, or under or in trust for the said [*ancestor*] deceased. AND THE SAID [*purchaser*], in consideration of the covenants and agreements in these presents contained, on the part of the said [*vendors*], doth hereby for himself, his heirs, executors, and administrators, covenant, pro*mise, and agree to and with the said [*vendors*], jointly, and each of them separately, their, and each of their heirs, executors, and administrators, in manner following, that is to say; that he the said [*purchaser*], his heirs, executors, or administrators, shall and will, upon the said —— day of this present month of ——, and upon the execution by the said [*assignee of mortgagee*] of such assignment as aforesaid of his said security, well and truly pay, or cause to be paid, unto the said [*assignee of mortgagee*], his executors, administrators, or assigns, the sum of —— thousand —— hundred pounds of lawful British money, in full for the principal money secured to him as aforesaid, on mortgage of the said messuage, lands, and hereditaments: AND shall and will, upon the said —— day of the same month of ——, well and truly pay, or cause to be paid, unto the said [*vendors*], or one of them, for the use and benefit of the said [*infant*], the infant, the further sum of —— hundred pounds of lawful money of Great Britain; *and also* shall and will, upon the perfecting, completing, and executing of such good title to, and conveyance of, the said messuage, lands, and hereditaments, unto the said [*purchaser*], his heirs or assigns, as aforesaid, well and truly pay, or cause to be paid, unto the said [*infant*], the infant, his heirs or assigns, the further sum of —— thousand pounds of like lawful money; which said sums of —— thousand —— hundred pounds, —— hundred pounds, and —— thousand pounds, making together —— thousand pounds, are to be considered to be in full for the absolute purchase of the said messuage, lands, and hereditaments, discharged of the aforesaid mortgage. AND FURTHER, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*vendors*], or one of them, their or

Covenant by purchaser to pay mortgage money on execution of assignment;

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to pay further sum to vendors at same time;

and to pay remainder of purchase money on execution of conveyance by infant or his heirs.

Purchaser to pay interest on part remaining unpaid.

FOR SALE OF AN INFANT'S ESTATE IN FEE.

one of their executors, administrators, or assigns, for the use and benefit of the said [*infant*], the infant, or his heirs, interest for the said sum of —— thousand pounds, after the rate of five pounds *per centum per annum*, to be computed from the said —— day of this present month of ——, until payment of the said principal sum, half yearly, as such interest shall become due; the first half yearly payment of such interest to be made *on the —— day of —— next ensuing: *and* that he the said [*purchaser*], his executors, administrators, or assigns, shall not nor will call in or compel payment of the said principal sum of —— thousand —— hundred pounds, so to be advanced and paid by him to the said [*assignee of mortgagee*] as aforesaid, or any part thereof, or any interest for the same, or the said sum of —— hundred pounds, until default shall be made in the performance of all or any of the covenants or agreements of the said [*vendors*], hereinbefore contained: PROVIDED ALWAYS, *and it is hereby declared* to be the true intent and meaning of all and singular the said parties to these presents, that if the said [*infant*], the infant, for the space of six calendar months next after he shall attain the age of twenty-one years, or in case of his death in the mean time, if the heir or heirs at law of the said [*infant*], the infant, for the space of six calendar months next after he, she, or they shall be capable, by law, of making and executing a conveyance of freehold lands, shall refuse or neglect to make out a good title, and execute a proper conveyance of the said messuage, lands, and hereditaments, and the inheritance thereof in fee-simple, unto the said [*purchaser*], his heirs or assigns, such conveyance being prepared and tendered for execution by and at the expense of the said [*purchaser*], his heirs or assigns; *then* the said [*purchaser*], his executors, administrators, or assigns, shall, at any time thereafter, be entitled to demand, sue for, recover, and receive of and from the said [*infant*], the infant, his heirs or assigns, or the personal representative for the time being of the said [*ancestor*], deceased, the said sum of —— thousand —— hundred pounds, so to be paid by the said [*purchaser*], to the said [*assignee of mortgagee*], as aforesaid, with the interest thereof, to be com-

[*98]

Not to compel payment of mortgage money.

If title be not perfected, and conveyances made, purchaser may compel payment of mortgage money.

FOR SALE OF AN INFANT'S ESTATE IN FEE.

puted from the said —— day of this present month of —— to the day on which the said principal money shall be actually paid, any thing hereinbefore contained to the contrary thereof notwithstanding: AND THE SAID [*vendors*], for themselves jointly and severally, and for their joint and several heirs, executors, and administrators, do, and each of them doth hereby further covenant, promise, and agree to and with the said [*purchaser*], his heirs, executors, administrators, *and assigns, that in case of such refusal or neglect on the part of the said [*infant*], the infant, or his heir or heirs at law as aforesaid, they, the said [*vendors*], or one of them, their or one of their heirs, executors, or administrators, shall and will immediately on such refusal or neglect, well and truly repay, or cause to be repaid, unto the said [*purchaser*], his executors, administrators, or assigns, the said sum of —— hundred pounds so to be advanced and paid by the said [*purchaser*], together with interest for the same after the rate of five pounds *per centum per annum*, to be computed from the said —— day of ——, to the day on which the repayment of the said sum of —— hundred pounds shall be actually made; *and also* shall and will at the same time well and truly pay, or cause to be paid unto the said [*purchaser*], his executors, administrators, or assigns, the further sum of —— pounds, by way of liquidated damages for the non-performance of the covenant and engagement hereinbefore entered into by the said [*vendors*], for and on the part of the said [*infant*], the infant, or his heir or heirs at law, and not by way of penalty. IN WITNESS, &c.

And vendors in that event covenant to repay sum advanced to them;

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with interest;

and further sum by way of liquidated damages.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

[AGREEMENT *under Seal for the* SALE *and* PURCHASE *of* FREEHOLD LANDS, *containing* SPECIAL STIPULATIONS *as to* TITLE (*a*).

ARTICLES OF AGREEMENT made and entered into this —— day of ——, 18—; BETWEEN [*vendor*], of &c., of the one part; and [*vendee*], of &c., of the other part.

Recital of contract.

WHEREAS the said [*vendor*] hath lately contracted with the said [*vendee*], for the absolute sale to him of the hereditaments hereinafter mentioned, including the timber thereon, free from all incumbrances (except as hereinafter also mentioned), at or for the price or sum of —— pounds. NOW

Testatum.

THEREFORE THESE PRESENTS WITNESS,

In consideration of purchase money.

that in consideration of the sum of —— pounds, of lawful money of the United Kingdom, to be paid to the said [*vendor*] at the time and in manner hereinafter expressed, he the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*vendee*], his heirs and assigns, that he the said [*vendor*], or his heirs, together with all other necessary parties, will, at or upon the —— day of ——next, by such conveyances and assurances in the law, as the said [*vendee*], his heirs or assigns, or his or their counsel shall require, well and effectually convey, or otherwise assure unto the said [*vendee*], his heirs or assigns, or to such person or persons as he or they shall direct; ALL THAT, &c., (*describe parcels, referring to Schedules*), certain parts of which said heredita-

Vendor covenants to convey to purchaser in fee.

Parcels.

(*a*) It has been thought advisable to substitute this precedent for a contract for sale of an entailed rent-charge, which was given by Mr. Bythewood in the former edition, and was too special in its circumstances for general use. For this and the next precedent, but the notes accompanying them, the present editor is exclusively responsible.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

ments and premises are now in the tenure or occupation of ——, by virtue of an indenture of lease, bearing date the —— day of ——, granted to him by the said [*vendor*] for the term of —— years, from the —— day of —— then last, at the yearly rent of —— pounds, payable quarterly; other parts thereof are in the occupation of ——, as tenant from year to year, at the yearly rent of —— pounds, and the residue thereof is in the hands of the said [*vendor*] (*b*); *And* the said [*vendee*], in consideration of the covenant hereinbefore contained, on the part of the said [*vendor*], doth hereby, for himself, his heirs, executors, and administrators, covenant with the said [*vendor*], his heirs, executors, and administrators, that he the said [*vendee*], his heirs, executors, or administrators, will, on the said —— day of —— next, on having a good and effectual conveyance executed to him or them as aforesaid, pay, or cause to be paid unto the said [*vendor*], his exe-

Covenant by vendee to pay purchase money.

(*b*) Notice to a purchaser of the existence of a lease or tenancy, is notice of the contents of such lease, or the terms of such tenancy.

Thus, if it were stated, that the premises were in lease for a certain term, and the purchaser made no farther inquiry, and it afterwards turned out that the lessee had a covenant for renewal, the purchaser would be bound by that covenant. See 16 Ves. 254.

Purchaser should inquire into the terms of existing leases or tenancies of which he has notice.

And the rule has even been carried to this extent, that where notice was proved against a purchaser, of the fact of the lands being in the occupation of a tenant, and he made no farther inquiry, and it turned out, that the lessee had himself a contract for the purchase of the estate, the purchaser was held to be affected with notice of, and therefore to be bound by, that contract. *Daniels* v. *Davison*, 16 Ves. 249. This is a very important doctrine, and should put purchasers on their guard. The contract in *Daniels* v. *Davison* was subsequent to, and quite distinct from the instrument by which the tenant became lessee. The principle would, of course, apply to those cases in which the lease contains a clause of pre-emption, (*ut post*, Vol. 4, p. 552), *Taylor* v. *Stibbert*, 2 Ves. Jun. 437; *Hall* v. *Smith*, 14 Ves. 426; and see 16 Ves. 254; and, therefore, where lands are described in particulars, or a contract for sale, as being held by lease, the purchaser should not be satisfied without seeing a copy of the lease; and where the statement simply is, that the lands are in the occupation of a tenant, the purchaser should inform himself of the nature of his interest, and the terms under which he holds; for by those terms he will be bound.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

cutors, administrators, or assigns, the sum of ——— pounds, being the full consideration money agreed to be given by the said [*vendee*] for the purchase of the said hereditaments. *And it is hereby agreed and declared*, that the said [*vendee*] shall be put in possession of all such parts of the said hereditaments as are in hand, and shall be entitled to receive the rents, issues, and profits of such parts of the said hereditaments as are in the possession of the tenants thereof, upon and from the said —— day of —— next; and that all rates, taxes, and other outgoings, in respect of the said hereditaments hereby covenanted to be sold, up to that time, shall be discharged by the said [*vendor*]. *And it is hereby further agreed and declared*, that if the completion of the said purchase shall be delayed beyond the —— day of —— next, then and in such case the said [*vendee*] shall pay and allow interest after the rate of *5l. per cent. per annum*, unto the said [*vendor*] for the said purchase money of —— pounds, or so much thereof as shall then remain unpaid, such interest to be computed from the said —— day of ——, up to and until the day on which the said purchase shall be completed; *Provided always*, and it is hereby further agreed and declared, that in case the said [*vendee*] shall, at any time or times previously to the said —— day of —— next, pay to the said [*vendor*] any sum or sums of money on account of the said purchase or consideration money of —— pounds, then and in such case the said [*vendee*] shall, on the completion of the said purchase, be allowed and receive a discount or rebate of interest after the rate aforesaid, on the sum or sums so paid by him on account of such purchase money, such discount to be calculated from the time, or respective times, when the same sum or sums shall be paid, up to and until the day on which the said purchase shall be completed; *nevertheless*, it is hereby declared and agreed, that the payment by the said [*vendee*], his heirs or assigns, of any such sum or sums on account of the said purchase or consideration money of —— pounds, shall not be deemed, or construed to be an acceptance by him or them of the title to the said premises, or as a waiver of any objections which may arise or be made thereto; *And further*, that the said [*vendor*], his heirs, executors,

Stipulations as to possession.

—Interest on purchase money.

Allowance of discount on purchase money paid before the time.

Such payment not to be a waiver of objections to title.

Vendor to make out title.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

or administrators, shall and will, at his own costs and charges, deliver unto the said [*vendee*], his attorney or solicitor, a true and complete abstract of his title to the said closes of ground and premises, on or before the —— day of —— now next; *And* that if any fine or recovery, or other assurance, shall be wanting to complete the title of the said hereditaments and premises in the said [*vendor*], the same, and all the assignments of any outstanding term or terms of years (if any) in the said hereditaments, which have not been already assigned in trust to attend the inheritance of the said hereditaments, except as hereinafter mentioned, shall be levied or suffered, or prepared and executed, at the costs and charges of the said [*vendor*], his heirs or assigns; and on the other hand it is agreed that the conveyance and assurance of the said hereditaments and premises, and the assignments of such terms in the said hereditaments as have been already assigned to attend the inheritance, as also all attested copies of deeds and covenants for the production of the same; and also, all copies of wills and acts of Parliament which may be required, shall be prepared at the sole costs and charges of the said [*vendee*], his heirs or assigns (*d*); *And it is hereby further agreed and declared*, that

Fine, or other assurance required to complete the vendor's title, to be at his expense.

Copies of deeds, &c. to be at purchaser's expense.

What title deeds

(*d*) Add, if so intended,

" and the said [*vendee*], his heirs, or assigns, shall be at the expense of any administration or administrations that may be required to be taken out, for the purpose of constituting a personal representative or representatives of the trustee or trustees, in whom any term or terms of years, affecting the said premises or any part thereof, shall have been vested."

Vendee to be at the expense of administrations

The present practice of requiring on behalf of a purchaser the assignment of outstanding terms, and the expense which has been frequently found to attend a compliance with the requisition, where the trustee of the term has been long dead, and nothing is known of his representatives, have led to the frequent introduction into contracts for sale of a stipulation, throwing the expense of any limited administration that may be required upon the purchaser, who is often disposed, if the purchase is small and the term is not wanted for his protection against incumbrances, to dispense with an

Remark upon stipulations of this nature.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

to be delivered to purchaser.

What to be retained by the vendor.

all title deeds and documents, relating solely to the hereditaments and premises hereby agreed to be sold, shall be delivered to the said [*vendee*] on the completion of the said purchase; and that the said [*vendor*] shall retain such of the deeds and documents as relate to the title of the hereditaments hereby agreed to be sold, jointly with other hereditaments, the property of the said [*vendor*], of greater, equal, or inferior value, he the said [*vendor*], his heirs or assigns, covenanting with the said [*vendee*], his heirs and assigns, for the production and preservation of the said last-mentioned deeds and documents; and that in case the said [*vendor*] or his ancestors, shall have entered into any covenant for the production of any of the deeds which, on the completion of this purchase, shall be delivered up to the said [*vendee*], he the said [*vendee*] shall, at his expense, enter into similar covenants with the persons entitled to the benefit of such former covenants, if such persons shall be willing to accept of the said [*vendee's*] covenant, in lieu of the covenants of the said [*vendor*] or his ancestors, but if not, the said [*vendee*] shall, at his own expense, execute unto the said [*vendor*] a covenant of indemnity in respect thereof. AND WHEREAS, by certain articles of agreement bearing date the —— day of ——, 18—, and made between [*vendor's ancestor*] of the one part, and A. B. of the other part, the said [*vendor's ancestor*], who is therein recited to have been seised of some freehold estate, in a certain field called ——, (being par-

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assignment of the term rather than incur the expense of getting in the term. Clauses of this nature should not be confined to *limited* administrations, since they may give rise to disputes as to whether the vendor has used due diligence in discovering the next of kin, and inducing them to obtain a general administration, for it is in these events only that a limited administration would become necessary. The difficulty attending the deduction of titles to terms, &c., sometimes induces an unfavourable feeling towards the refinements in modern conveyancing, out of which requisitions of this kind have sprung; but it should be remembered, that the inconvenience is rather the result of the negligence of former times, than of the more cautious system of the present day; for if the practice of modern conveyancing had prevailed during the last century, the investigation of titles would lead to few of the difficulties which are now to be encountered.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

cel of the said several hereditaments hereby contracted to be sold), did covenant and agree with the said A. B., for the peaceable and quiet enjoyment by him the said A. B., his heirs and assigns, of a certain lane or way containing about ——, which had been lately inclosed by the said [*vendor's ancestor*], and then formed a part of the said close called ——, at, under, and subject to the payment for ever thereafter unto him the said [*vendor's ancestor*], his heirs or assigns, or unto such other person or persons as should, for the time being, be seised or possessed of the said close, of the annual sum of —— pounds. *Now it is hereby agreed and declared, by and between the parties hereto,* that the said lane or way so inclosed, and forming part of the said close, shall be excepted out of this contract, and the conveyance to be made in pursuance hereof, and that the said [*vendee*], his heirs and assigns, shall accept and take the said annual sum of —— pounds, in lieu and full compensation of and for the same lane and way so inclosed as aforesaid. AND WHEREAS a small parcel of land, lying at the north-eastern end of a garden belonging to a cottage, now or formerly called ——, parcel of the premises hereby contracted to be sold, was purchased by the said [*vendor*] of A. Z., of &c., who conveyed the same to him in fee, by indentures of lease and release, bearing date the —— and —— days of ——, but no deeds or documents of title were, upon that occasion, delivered to the said [*vendor*]. IT IS THEREFORE further agreed between the said [*vendor*] and [*vendee*], that he the said [*vendor*] shall not be called upon for, or be required to produce any other evidence or documents of title to the said last-mentioned parcel of garden-ground, or to any allotment or allotments made in respect thereof, and hereby contracted to be sold, other than the said indentures of lease and release (*a*). AND WHEREAS the said [*vendor*] pur-

Purchaser to accept an annual sum in lieu of a certain lane or way.

Purchaser not to require title to be deduced to a small piece of ground, anterior to the vendor's conveyance.

(*a*) No precaution should be more strongly impressed upon persons about to dispose of real estate, than that of having the title submitted to investigation, previously to their entering into a contract for sale. Not only does this precaution sometimes prevent the dangerous exposure to third persons of a fatal and irremediable defect, (and which might have led to actual eviction), but it enables the vendor to enter into special stipu-

Title of lands should always be investigated previously to sale.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

chased certain other parts of the said hereditaments and premises hereby contracted to be sold, of and from P. T., of &c., but no deeds or documents of title were delivered to the said [*vendor*], relating to, or shewing the nature of the title to a certain cottage, or dwelling-house, garden, and orchard, situate in, or adjoining to ——, (part of such purchase), prior to the year ——, when the same was devised in fee to C. D., the father of the said P. T., from whom the same descended to the said P. T. *Now therefore it is hereby agreed by and between the said* [*vendor*] *and* [*vendee*], that the said [*vendor*] shall not be obliged or required to produce or shew any documents or

Purchaser to accept title to a cottage commencing with a certain will.

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lations, adapted to the particular circumstances of the title. Where the contract is entered into, without such a previous examination as is here recommended, it is very convenient to introduce some general stipulations of the nature of those in the text, negativing the purchaser's right to require evidence of heirship, deaths, and other facts recited in deeds of a certain antiquity, which is often a subject of much dispute between vendors and purchasers. If the title has undergone examination, the particular cases in which the evidence is not to be required may be stated, or the general clause framed so as to extend to them.

As to stipulations negativing the purchaser's right to call for title beyond a prescribed period.

A practice has much prevailed of late years, especially in sales by auction, of providing that the purchaser shall not require a title beyond a certain period, and this has been in some instances carried so far, as to preclude him from calling for the production of the title antecedently to a very recent period, as the vendor's conveyance, or a late inclosure act, &c. so that the purchaser has scarcely more than the mere possession of the property, and that *primâ facie* evidence of ownership, which possession carries. It is extraordinary, that persons should so readily purchase under stipulations of this nature, which deprive them of the means of ascertaining that what they have purchased really belongs to the person who has dealt with it as his own. Where a vendor has himself no better title, the introduction of the restriction is, of course, accounted for in a manner much more satisfactory to a purchaser, than where there is a prior title which the vendor does not choose to disclose. Indeed, no person can honestly enter into a contract, precluding a purchaser from an opportunity of investigating the title when he is aware of a defect, by which the enjoyment of the property is endangered; and it is apprehended that a purchaser, notwithstanding such an agreement, might shew, if he could, that the title was defective, and resist the performance of the contract on this ground. The *onus*, however, it should seem, would lie on him, and the means of discovering the defect are seldom in his power.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

evidence of title to the said cottage, garden and orchard, anterior to the said will: *And the said* [*vendee*] *doth hereby also agree*, to accept and take the covenant of the said P. T., as an indemnity against the annuity of —— pounds, payable to [*annuitant*] for her life, under the said will, and charged and chargeable on the said hereditaments and premises, purchased of the said P. T., or some part thereof, with other hereditaments of great value. AND WHEREAS upon the investigation of the title to the lands and hereditaments hereby contracted to be sold, it appeared that certain parts thereof were, by indentures of lease and release, bearing date respectively, the —— and —— days of 1759, conveyed and assured to trustees, in fee simple, upon trusts which have long been satisfied, but no re-conveyance of the legal estate can be proved to have been executed; but the counsel for the said [*vendor*] is of opinion, that at this distance of time a reconveyance of the said hereditaments would be presumed to have been made (*a*). *Now it is hereby agreed and declared*, that the said [*vendee*] shall not be entitled to call for, or require to be produced, any evidence of the said legal estate having been reconveyed by the said trustees or their representatives, but shall rest satisfied with proof or evidence of the trusts or purposes for which the same was created, being determined or satisfied. AND WHEREAS it further appeared upon the said investigation of the title of the said hereditaments, that by an indenture of assignment, bearing date the —— day of ——, 1758, a certain term of one thousand years, created as therein recited, affecting a small part of the hereditaments hereby contracted to be sold, was assigned unto A. B., gentleman, upon trust, to attend the inheritance, but no notice is taken of the said term in any of the subsequent title deeds, nor can it be shewn that the same has been since assigned or surrendered. *Now it is hereby agreed and declared*, that if the said [*vendee*] shall be desirous of having the said term assigned

Also to accept a certain indemnity against an annuity.

Purchaser to be at the expense (if required) of getting in outstanding legal estate, (a conveyance of which vendor is advised would be presumed).

(*a*) As to the rules of presumption in these cases, see Index to the notes, title "Presumption."

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

to a trustee for him, all expenses attending the inquiry for, or discovery of, the personal representative of the said A. B., in whom the same is now outstanding, or of any limited or general administration that may be necessary for the purpose of constituting such personal representative, and all other expenses attending the obtaining an assignment of the said term, except so far as respects the execution thereof by the said [*vendor*], shall be paid and borne by the said [*vendee*]. AND WHEREAS by the settlement made on the marriage of the said [*vendor*] with his present wife, [*vendor's wife*], (formerly A. B., spinster), bearing date the —— and —— days of ——, certain lands and hereditaments therein comprised, are limited after the decease of the said [*vendor*], to the use of the said [*vendor's wife*] for her life, if she should so long continue his widow, in bar and satisfaction of her dower or thirds of and in any lands, tenements, and hereditaments, of which he, during the coverture, might be seised. *Now it is hereby agreed and declared by and between the said parties*, that the said [*vendee*] shall not be entitled to call for, or require a fine to be levied by the said [*vendor*] and [*wife*], his wife, for the purpose of barring or extinguishing her right or title to dower of or in all or any part of the said hereditaments and premises hereby contracted to be sold, or to require the title to be deduced to the lands and hereditaments settled upon the said [*vendor's wife*] as aforesaid, but shall rely upon and rest satisfied with a covenant for the production of the said indentures of lease and release or marriage settlement, as evidence of the said [*wife*] being barred of her dower or thirds, and right of dower or thirds, in or to all and every the hereditaments and premises hereby contracted to be sold as aforesaid (*a*). AND *it is also agreed*,

Purchaser bound to rely upon vendor's wife's jointure as a bar of dower.

Whether a purchaser is bound to rely on a jointure as a bar of dower.

(*a*) Whether a purchaser is entitled to a fine in such a case as this, or is bound to rely upon the jointure, is a debateable point. The better opinion seems to be, that he may require a fine to be levied, or the title to the jointure-lands to be produced, because, in the event of eviction from those lands, the wife's claim to dower would be let in upon the lands contracted to be sold. Sugd. Vend. & Purch. 7 Ed. 327. To prevent all

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

that no evidence shall be called for or required by the said [*vendee*] to be produced, of the birth, marriage, death, intestacy, or heirship of any person or persons, occurring in the title to the said hereditaments and premises hereby contracted to be sold, nor of the survivorship of any trustee, or other person, where such birth, marriage, death, intestacy, heirship or survivorship, shall have been stated, recognized, or taken notice of, in any of the title deeds affecting the said premises, or any part thereof, bearing date upwards of

Not to call for evidence of facts stated in deeds more than thirty years ago.

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dispute upon the point, it seems to be prudent to make it the subject of express stipulation.

Another point, until recently much agitated between vendors and purchasers, was, whether a purchaser could be compelled to rely upon a term of years created antecedently to the inception of the wife's dower, as a protection against it, or was entitled to have it barred by fine. A late determination, however, has set this question at rest, by completely negativing the purchaser's right to a fine in such a case.

Whether a purchaser is bound to rely upon a term of years as a bar of dower.

Thus, in *Mole* v. *Smith*, 1 Jacob. 490, it appeared, that, in 1801, certain aliquot shares in the lands in question were purchased by, and conveyed to W. in fee; and at the same time three satisfied mortgage terms of five hundred years, two thousand years, and two thousand years, were assigned to Y., a trustee for him, to attend the inheritance. In 1802, W. conveyed the premises to O. in fee, by way of mortgage; and it was declared, that all persons in whom any satisfied terms were then vested, should stand possessed thereof in trust for the mortgagee, and for better securing the mortgage money. In 1808, a partition of the estate was made under a decree of the Court of Chancery, and the entirety in a part of it conveyed to O., subject to the equity of redemption in W. W. became bankrupt, and the plaintiffs, his assignees, now sold the premises allotted to W. on the partition, to the defendant. The plaintiffs had paid off O.'s mortgage, and taken a conveyance from him. Y., the trustee of the term, was dead, *and W.'s wife had administered to his effects*, and in that character was now possessed of the terms in question. The question was, whether the purchaser was bound to accept an assignment of the terms in question, as a bar to the dower of this lady; and Lord *Eldon* decided, that he was; and that the circumstance of their having become vested in her as administratrix, made no difference. She was a trustee for the plaintiffs, the assignees, and bound to assign the term to their assignee.

Affirmative decided in *Mole* v. *Smith*.

In this case, the deeds creating the terms, appear not to have been delivered up to the purchaser.

FOR SALE, WITH SPECIAL STIPULATIONS AS TO TITLE.

thirty years ago; neither shall the said [*vendee*], his heirs or assigns, be entitled to require that the award of the commissioners, appointed under the act or acts of Parliament, for inclosing the commonable lands in the parish of —— aforesaid, shall be perfected before the completion of the said purchase, but shall accept a conveyance of the allotments set out for the said [*vendor*], by the said commissioners, notwithstanding the award shall not have been perfected (*a*); *And lastly, it is hereby agreed and declared*, that in case any error or mistake shall appear in the description of the parcels mentioned in the schedule to these presents, or in the nature or quantity of the vendor's interest therein, or any other error shall appear in respect thereof, such mistake shall not vacate the present contract, but a compensation shall be given or taken, as the case may require, such compensation to be estimated by two indifferent persons, one to be chosen by and on the part of the said [*vendor*], and the other by and on the part of the said [*vendee*], and in case of their disagreement, then by such third person as they shall for that purpose indifferently appoint, according to the usual course of arbitrations, with a clause of umpirage. IN WITNESS, &c.

Purchaser not to require inclosure-award to be perfected.

Errors of description not to vitiate the contract, but compensation to be made.

Schedules.

FIRST SCHEDULE referred to by the before written contract.

Names of Fields.	Quality.	Quantity.

SECOND SCHEDULE referred to by the before written contract.]

Purchaser held to be bound to complete, notwithstanding that an inclosure-award had not been executed.

(*a*) In *Kingsley* v. *Young*, 17 Ves. 463, Sir *Wm. Grant*, M. R., overruled an objection by a purchaser, that the award of the commissioners under an inclosure act, had not been made, the act containing a clause giving validity to sales and conveyances before the award, and the purchaser (who was the tenant), having notice of all the circumstances.

FOR THE PURCHASE OF A LEASEHOLD MESSUAGE.

[AGREEMENT *for the* PURCHASE, *&c. of a Leasehold Messuage, &c. with Covenants to* ASSIGN *the* LEASE *when found, it being mislaid.* PURCHASE MONEY *to be paid by* INSTALMENTS, *with Interest.*

ARTICLES OF AGREEMENT bearing date this —— day of ——, in the year 18—, BETWEEN [*vendor*], of &c., of the one part; and [*vendee*], of &c., of the other part.

Recital of vendor's interest.

WHEREAS the said [*vendor*] is possessed of, or entitled to a messuage or tenement numbered —— in —— street aforesaid, wherein the said [*vendor*] now resides, for the residue of a term of —— years or thereabouts, from the —— day of ——, at the clear yearly rent of —— pounds, under a lease thereof, which at present cannot be found; *And also* to a coach-house and a four-stall stable, held by the same lease, at the clear yearly rent of —— pounds; AND WHEREAS the said [*vendee*] hath contracted with the said [*vendor*] for the purchase of all his right and interest in the said messuage or tenement, coach-house, stable, and premises, subject to the payment of the said rents, and all taxes and other outgoings payable for or in respect thereof respectively, in such and the like manner as he the said [*vendor*] now holds and enjoys the same, at and for the price or sum of —— pounds, which it hath been agreed shall be paid in manner hereinafter mentioned. NOW THESE PRESENTS WITNESS, that in consideration of the sum of —— pounds of lawful money of the United Kingdom, paid by the said [*vendee*], to the said [*vendor*], at or before the sealing and delivery of these presents, the receipt whereof the said [*vendor*] doth hereby acknowledge, and also of the further sum of £ ——, the residue of the said purchase money, or sum of £ ——

Of contract for sale.

Testatum.

FOR THE PURCHASE OF A LEASEHOLD MESSUAGE.

to be paid as hereinafter mentioned; he the said [*vendor*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant with the said [*vendee*], his executors, administrators, and assigns, that he the said [*vendee*], his executors, administrators, or assigns, shall and may from the —— day of —— next ensuing, have, hold, occupy, possess, and enjoy, the said messuage or tenement, coach-house, stable, and premises, with the appurtenances, for all the residue of the said term of —— years, and for all such other term, estate, and interest, as he the said [*vendor*] could or might have held or enjoyed the same in case these presents had not been made, without any let, suit, trouble, or molestation of, from, or by the said [*vendor*], his executors, or administrators, or any person or persons lawfully claiming or to claim, by, from, or under, or in trust for him or them, subject nevertheless to the payment of the said several yearly rents of —— pounds, and —— pounds, from the said —— day of —— next, during the continuance of the said term in the premises; *And also* subject to the payment of all taxes, charges, and other impositions already assessed or imposed, or which, during the continuance of the said term, shall be assessed or imposed upon the said premises, or any part thereof, from the said —— day of —— next, but free and exempt from all such rents, taxes, charges, and impositions, up to that day; and also that he the said [*vendor*], his executors or administrators will as soon as the said lease can be had or found for the purpose, upon the request, and at the costs and charges of the said [*vendee*], his executors, administrators, or assigns, and without any further consideration for the same beyond the said sum of £——, paid or to be paid as herein mentioned, deliver the said lease, and, by sufficient assurances in the law, assign and assure the same, and the premises therein comprised, for the residue of the term then unexpired therein, unto the said [*vendee*], his executors, administrators, and assigns, or as he or they shall direct, subject nevertheless to the rent and covenants aforesaid: And the said [*vendee*] doth hereby for himself, his heirs, executors, and administrators, covenant with the said [*vendor*], his executors, administrators, and

Covenant by vendor for quiet enjoyment by vendee.

Subject to the rent and taxes.

And to assign the lease when found.

Covenant by vendee to pay purchase money.

FOR THE PURCHASE OF A LEASEHOLD MESSUAGE.

assigns, that, in consideration of the premises, he the said [*vendee*], his executors, administrators, or assigns, will pay to the said [*vendor*], his executors, administrators, or assigns, the said sum of £——, the residue of the said purchase money, or sum of £——, in manner following, that is to say, the sum of £——, part thereof, on the —— day of ——, and the sum of £—— the residue thereof, on the —— day of ——, with interest, at the rate of 5*l. per cent.* (*a*)

(*a*) In a late case, where a contract was made for the sale of an estate at a certain price, and it was agreed that it should be paid by instalments at future days with *interest* thereon, calculated at 6*l. per cent. per annum*, and promissory notes were given for these sums, compounded of the instalments, with the "interest" so calculated, payable at such future days, it was held that this was not usurious, for that the sum here called "interest," was in fact part of the purchase money, the contract being, in substance, for the sale of the estate, at the aggregate sum for which the notes were given, payable by instalments. *Beche* v. *Bedgood*, 7 Barn. & Cress. 453.

Agreement to pay 6*l. per cent.*, calculated on unpaid purchase money held not to be usurious.

But in the case of *Sinclair* v. *Steavenson*, 10 J. B. Moore, 46, where it appeared that in December, 1823, the defendant A., a distiller, being desirous of disposing of the plant and utensils of his distillery, offered to sell them to B. for 1500*l.* B. not being then in a situation to raise the sum required, it was agreed between him and A., that he should, on payment of 300*l.* down, and in consideration of certain rents reserved to A., have possession of the property in question, for four years; and a deed to that effect, dated 31st January, 1824, was accordingly executed; and which witnessed, that in consideration of the sum of 300*l.*, paid by B. to A., and of the rents, reservations, and covenants, therein contained, A. demised to B. the plant and all the coppers, boilers, vats, &c. and fixtures belonging to the premises; to hold from the 25th December, 1823, for four years, B. yielding and paying on the 24th June, in the first year of the term, to A. the clear rent of 210*l.*, and also on the 25th December in that year, 202*l.* 10*s.*; also on the 24th June, in the second year, 195*l.*; also on the 25th December, in that year, 187*l.* 10*s.*; also on the 24th June, in the third year, 180*l.*; also on the 25th December, in that year, 172*l.* 10*s.*; also on the 24th June, in the last year, 165*l.*; and also on the 25th December, in that year, 157*l.* 10*s.* clear of all taxes and other deductions (the whole amounting to 1469*l.* 10*s.* which was the amount of the principal sum originally required by A. for the purchase, together with the interest thereon, after the rate of 10*l. per cent*). The deed also contained a proviso, that if, during the term of the four years, the rent should not be paid within fourteen days after either of the days of payment, or B. should be declared bankrupt, or if he should make default in payment of 494*l.* se-

Case in which a security taken for unpaid purchase money was decided to be usurious.

FOR THE PURCHASE OF A LEASEHOLD MESSUAGE.

And pay and perform rents and covenants of lease.

on the said several instalments, from the —— day of ——, when possession of the said premises is to be delivered to the said [*vendee*]; and that he the said [*vendee*], his executors, administrators, or assigns, will, from time to time, and at all times, from and after the said —— day of —— during the residue of the said term in the premises, pay or cause to be paid the said several yearly rents of —— pounds and —— pounds, when and as the same shall become payable, and will perform the covenants in the said indenture of lease, and which, on the part of the lessee therein named, ought to be performed; and from the said yearly rents and covenants, and all taxes, charges, and assessments, and impositions, which, from the said —— day of ——, shall be assessed and imposed in respect of the said

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cured to A. by a bill of exchange, drawn by B. on, and accepted by one N., and which bill was given for one half of the price contracted to be paid by B. to A. for the stock of spirits bought by B. belonging to A., then the whole of the four years' rents were to be considered as presently due; and it should be lawful for A. to re-enter, and sell and dispose of the plant, &c.; and if there should be any residue of the monies to arise from such sale, then in trust for A. to pay it over to B. Then followed a covenant by A. that in case of payment by B. of the above sums or rents, and due observance by him of the covenants in the deed, A., at the expiration of the four years, would assign the plant, &c. to B. for his own use. B. accordingly took possession of the premises under the deed, and continued therein until the 5th of May following, when a commission of bankrupt having issued against him, A. took possession of the plant, &c. under the above proviso for re-entry. The present was an action brought by B.'s assignees, to recover the plant, &c. as being in the order and disposition of B. (the bankrupt), and one of the points left to the jury was, whether the deed was usurious; they found in the affirmative.

The question as to usury does not seem to have been very material under the circumstances of the case, but Lord Chief Justice *Best* expressed a strong opinion, that the finding of the Jury was right, the transaction being, his Lordship thought, in the nature of a loan. The question in all such cases would be, whether the sum stipulated to be paid on the unpaid instalments formed an integral part of the purchase money, as it was considered to be in the case in *Beche* v. *Bedgood*, or whether there were two distinct transactions: the one a purchase at the sum named, and the other a loan of that sum to the vendee, which, in the opinion of the Jury and the learned Chief Justice, was the character of the transaction in *Sinclair* v. *Steavenson*.

premises, or any part thereof, will effectually keep indemnified the said [*vendor*], his heirs, executors, and administrators, and his and their lands and tenements, goods and chattels respectively for ever therefrom; *And lastly*, it is hereby declared and agreed, by and between the said parties, that the said covenant hereinbefore contained, on the part of the said [*vendor*], to deliver the said lease, and assign the said premises, and the said covenant of the said [*vendee*] to pay the residue of the said purchase money, shall be, and be construed to be distinct and independent covenants, and not the one as dependent, or conditional, upon the performance of the other (*b*). IN WITNESS, &c.]

FOR THE PURCHASE OF A LEASEHOLD MESSUAGE.

Covenants not to be dependent and conditional.

(*b*) As to covenants being dependent, *vide post*, Vol. 4, p. 394.

ON A PURCHASE WITH A DEFECTIVE TITLE.

AGREEMENT *between two Vendors and a Purchaser, where Money to be paid on a Valuation of Timber is to be invested in the Funds in the Names of Trustees, until a Title can be made to a Part, outstanding Terms assigned, and Title Deeds found; and in the mean Time, as an* INDEMNITY *to the* PURCHASER.

ARTICLES OF AGREEMENT indented, made, and agreed upon, the —— day of ——, 18—, BETWEEN [*one of the vendors*], of &c., widow and relict, and sole executrix named and appointed in and by the last will and testament of [*testator*], late of the same place, ——, deceased, and [*the other vendor*], of &c., and which said [*vendors*] are the devisees *in trust*, named in the same will, of the one part; and [*purchaser*], of &c., of the other part.

Parties.

WHEREAS by indentures of lease and release, by way of mortgage, bearing date respectively on or about the —— and —— days of ——, 17—, and made or expressed to

Recital of mortgage in fee by husband, to the trustees of his

ON A PURCHASE WITH A DEFECTIVE TITLE.

be made between the said [*testator*], of the one part; and [*mortgagees*], of &c., of the other part; the said [*testator*], in consideration of the sum of —— pounds, paid to him by the said [*mortgagees*], granted and released unto and to the use of the said [*mortgagees*], their heirs and assigns, a certain manor, or reputed manor, and other hereditaments and premises, situate, &c. *subject nevertheless* to a proviso for redemption, on payment by the said [*testator*], his heirs, executors, or administrators, unto the said [*mortgagees*], or the survivor of them, or his executors, administrators, or assigns, of the said sum of —— pounds, and interest thereon, at the rate of five pounds *per centum* *per annum*, on a day therein * mentioned, and long since past: WHICH said indenture of release contains a declaration by the said [*mortgagees*], that the said mortgage money was produced by the sale of —— thousand pounds, Consolidated three pounds *per centum* Annuities, transferred to them by virtue of an indenture, bearing date on or about the —— day of ——, 17—, being a settlement made previous to the marriage of the said [*testator*], deceased, with [——], his former wife; and that the said mortgage money was subject to the several trusts in such indenture of settlement contained, respecting the said —— thousand pounds, Consolidated three pounds *per centum* Annuities. AND WHEREAS, by indentures of lease and release, indorsed on the said recited indentures of lease and release, by way of mortgage, and bearing date respectively on or about the —— and —— days of ——, 17—, and made or mentioned to be made between the said [*surviving mortgagee*], of the one part; and [*daughters of testator*], of &c., of the other part; *reciting* the death of the said [*testator*] and [——], his former wife, leaving the said [*daughters*], their only children, who, as such, were entitled equally between them to the sum of —— thousand pounds, secured by the said recited mortgage: *And also reciting* the death of the said [*deceased mortgagee*]; *And* that the said [*daughters*] had requested the said [*surviving mortgagee*] to assign the mortgage money, and convey the mortgaged premises to them; and which was accordingly done by the indentures of lease and release now in recital; *But subject nevertheless* to such equity of redemption as was contained in the first recited

marriage settlement, on their transferring to him the trust funds.

[*115]

Recital of declaration, that mortgage money was trust money, and settled on the marriage of mortgagor with his late wife.

Recital of transfer of mortgage from trustee to two daughters, the only children of the marriage.

indenture of release, of the —— day of ——, 17—; *As* by the said several recited indentures, reference thereto being had, will more fully appear: AND WHEREAS, the said [*vendors*], as such devisees *in trust* as aforesaid, did lately contract and agree with [*agent for purchaser*], of &c., for the sale to him of the fee-simple and inheritance of *All that* then lately newly-erected capital messuage, or dwelling-house, with the garden and outhouses thereto belonging; *And also all that* the estate, manor, and demesne lands, farms, houses, lands, woodlands, underwoods, tenements, and hereditaments, to the said mes*suage, estate, [*116] and manor belonging, or in any wise appertaining, or therewith held, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof; *Together* also with the portion of two-thirds of tithes in and upon certain parts of the said demesne lands, containing about —— acres; *Which* tithes were described to be then lately purchased by the said [*testator*], deceased, of [A. B.]; *And* which manor, hereditaments, and premises, were, by a printed particular, mentioned to be annexed to, and referred to by the said contract now in recital, described to be situated in the county of ——, with the appurtenances, free from incumbrances (*except* a yearly rent of —— shillings, payable by way of fee farm-rent), at or for the price or sum of —— thousand pounds: *And it was thereby further agreed*, that the said [*agent for purchaser*] should further pay to the said [*vendors*], their heirs or assigns, for all the timber, including the bark, and tops and lops, growing upon the whole of the estate and premises, as the same should be measured and valued by two indifferent persons or their umpire, one of such indifferent persons to be chosen by the said [*vendors*], and the other by the said [*agent for purchaser*]; in which measurement and valuation all timber trees and saplings growing on the said premises, which were of the value of (*one shilling*), or above that value, were to be estimated according to the usual manner and custom of valuing timber. AND WHEREAS the said contract so made by the said [*agent for purchaser*] was so made and entered into by him on the behalf of, and in trust for the said [*purchaser*]. AND WHEREAS the said manor or reputed manor, newly-erected capital messuage, and other messuages, tenements, farms, lands, woodlands,

ON A PURCHASE WITH A DEFECTIVE TITLE.

Recital of contract for purchase of the estate.

Recital of agreement, that timber should be valued.

Recital, that contract was made by agent on behalf of principal.

Recital, that the premises contracted to be purchased,

ON A PURCHASE WITH A DEFECTIVE TITLE.

hereditaments, and premises, contracted to be sold as aforesaid, comprised all the said manor, hereditaments, and premises, so mortgaged by the said [*testator*] as aforesaid, *except* such part of the lands belonging to the same as had been conveyed or agreed to be conveyed, by the said [*testator*] deceased, in his lifetime, and after making the said recited mortgage as aforesaid, to the said [A. B.], in exchange for the said portion of tithes included in the said recited contract for sale; and also for all those several [*117] *pieces or parcels of arable land, situate, lying, and being dispersedly in the common fields of —— and within the manor of —— aforesaid, containing by estimation, —— acres, —— roods, and —— perches, (more or less), then or then lately in the possession of ——, under or by virtue of a copyhold or customary grant thereof, for lives, which same —— acres, —— roods, and —— perches were likewise included in such recited contract of sale. And WHEREAS upon investigating the title to the said two-third parts of tithes, and the said —— acres, —— roods, and —— perches of commonable land, it appears that the same is either defective or cannot at present be made good; *And therefore* it hath been agreed between the parties hereto, that a conveyance shall now be taken of the said manor or reputed manor, newly-erected capital messuage, and other messuages, tenements, farms, lands, woodlands, hereditaments, and premises, comprised in the said recited indentures of mortgage, of the —— and —— days of —— 17—, and being the whole of the premises thereby mortgaged, (except as aforesaid) unto and to the use of, and in trust for the said [*purchaser*], his heirs and assigns: *But* that no conveyance shall now be taken of the said portion of tithes and commonable land, so had in exchange as aforesaid, on account of the title thereto not being at present made good as aforesaid; *Although* it hath nevertheless been agreed that the said [*purchaser*] shall immediately enter into and be entitled to the rents, issues, and profits, and become possessed of the same respectively. And WHEREAS it hath been agreed by and between the said [*vendors*], and the said [*purchaser*], that the sum of —— thousand pounds mentioned in the said recited contract, shall be immediately paid, pursuant to the terms thereof: *And* that the timber and wood thereby agreed to be mea-

comprised all the premises mortgaged by the testator, *except* such part as he had afterwards conveyed in exchange for tithes and lands.

Recital of defect in title to tithes, and lands taken in exchange.

Recital of agreement, that a conveyance should be made of the other parts;

but no conveyance to be made of tithes and lands taken in exchange.

Yet purchaser to be entitled to the beneficial enjoyment thereof.

Recital of agreement, that purchase money should be paid, and timber valued, and paid for as after-mentioned.

ON A PURCHASE WITH A DEFECTIVE TITLE.

sured and valued, shall be measured and valued accordingly, before the —— day of ——, next ensuing the date hereof; *and* the amount of the valuation paid as hereinafter mentioned: And whereas it also appears that there are two terms of (*two*) hundred years and (*five*) hundred years, comprising the said manor, hereditaments, and premises, so mortgaged by the said [*testator*], deceased, to the said [*mortgagees*], as herein before recited; the term of (*two*) *hundred years, created by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, 17—, by way of settlement, on the marriage of [C. D.] and [E. F.], therein respectively described; *And* the said term of (*five*) hundred years, created by indenture of demise or mortgage, bearing date on or about the —— day of ——, 17—, made by the said [C. D.] to [G. H.] and [I. K.], therein respectively described, for securing the sum of —— thousand pounds, and interest; *And* there being no evidence of such terms ever having been assigned to attend the inheritance of the premises, expectant thereon, it hath been required, on the part of the said [*purchaser*], that the same shall be regularly assigned to a trustee, or trustees, of his own nomination, for his use, and to attend the inheritance of such parts of the same premises as have been contracted to be purchased by him as aforesaid; *But* by reason of its being difficult to find the legal personal representatives of the respective persons, in whom the said two several terms were originally vested; *And* as it will require some time to get the said assignments made, it hath been proposed and agreed, by or on the behalf of the said [*vendors*], to enter into a covenant for procuring the requisite assignments thereof, in manner hereinafter mentioned: And whereas it likewise appeareth that an indenture of mortgage, bearing date on or about the —— day of ——, 17—, and made between, &c. and whatsoever assignments thereof had been made and executed between the said date of such mortgage and the —— day of ——, 17—, when an assignment of the same was made to the said [*testator*], deceased, are not amongst the title deeds belonging to the said manor and estate of ——, but are alleged to have been lost or mislaid,

Recital of two satisfied terms for years;

[*118]

which had not been assigned to attend the inheritance, and which the purchaser required;

but on account of difficulty in finding termors' personal representatives, vendors agreed to enter into present covenant.

Recital, that part of title deeds was missing, and that purchaser should be indemnified on that account.

ON A PURCHASE WITH A DEFECTIVE TITLE.

and therefore cannot now be delivered to the said [*purchaser*]; on which account it hath been agreed, that the said [*purchaser*] shall be indemnified as hereinafter mentioned: AND WHEREAS, by indentures of lease and release, the lease bearing date the day next before the day of the date of the release, and the release bearing even date with these presents, and made or expressed to be made between the said [*daughters*], therein described, of

Recital of conveyance to purchaser.

[*119] *the first part, the said [*vendors*] of the second part; the said [*agent for purchaser*] of the third part; the said [*purchaser*] of the fourth part; and [*trustee to prevent dower*], therein described, of the fifth part: *The* said manor, or reputed manor, newly-erected capital messuage, and such of the said hereditaments comprised in the said recited indentures of mortgage, of the —— and —— days of ——, 17—, as were, with the said portion of tithes and commonable land, agreed to be purchased by the said [*agent for purchaser*] as aforesaid, *Have*, in consideration of the said principal sum of [*mortgage money*] (all interest thereon having been previously paid to the said [*daughters*], parties thereto), expressed to be paid by the said [*purchaser*], and of the sum of —— thousand pounds, (making together the said sum of [*purchase money*]) to the said [*vendors*], expressed to be also paid by the said [*purchaser*]; been conveyed and assured, or intended to be conveyed and assured, (with the consent of the said [*agent for purchaser*],) *To the use* of, or in trust for, the said [*purchaser*], his heirs, appointees, and assigns, for ever. NOW THESE PRESENTS WITNESS, that in pursuance of the said recited agreement, *It is hereby mutually covenanted, declared, and agreed*, by and between the said parties hereto, *That* the said timber and wood, upon the said manor, estate, and premises, so conveyed or assured, or intended to be conveyed and assured, to the use of, or in trust for the said [*purchaser*], his heirs, appointees, and assigns as aforesaid, shall be measured and valued (*a*), by or before the —— day of —— next ensuing the date hereof, according to the mode

Testatum.

Agreement that timber shall be valued and the money invested:

[(*a*) The Court will not enforce the specific performance of an agreement to sell at a valuation, if the price fixed appears to be considerably below the real value. *Parken* v. *Whitby*, 1 Turn. 366.]

ON A PURCHASE WITH A DEFECTIVE TITLE.

prescribed by the said recited contract, and the amount of such valuation shall be paid or invested and applied in manner following, that is to say; *In case* a good, sure, and indefeasible title be made out and perfected, to the said two third parts of tithes, and the said —— acres, —— roods, and —— perches of commonable land, by the said —— day of —— next, and the same premises should by that time be conveyed and assured to him the said [*purchaser*], his heirs or assigns, or to such person or persons as he or they should direct or appoint: *And also*, in case *the said two outstanding terms, of (*two*) hundred years, and (*five*) hundred years, if existing, be regularly assigned by two separate deeds, to a trustee or trustees nominated by the said [*purchaser*], his heirs, appointees, or assigns; *And* if the said mortgage deed of the —— day of ——, 17—, and all the missing assignments thereof, be found and delivered to the said [*purchaser*], his heirs, appointees, or assigns, or proper and effectual releases or acknowledgments, or other legal evidence be produced to shew that the debt secured by the said indenture of mortgage of the —— day of ——, 17—, was paid off and discharged; *And* that the said assignment of the —— day of ——, 17—, was made and executed by the persons entitled to assign such mortgage, and was for the absolute use and benefit of him or them, by or before that time; *Then* he the said [*purchaser*], his executors, administrators, or assigns, shall, on such —— day of —— next, pay the full amount of such valuation to the said [*vendors*], their heirs, executors, administrators, or assigns, without any deduction whatsoever; *But* in case the said title to the said portion of tithes and commonable lands should not clearly, and to the satisfaction of the said [*purchaser*], his heirs, appointees, or assigns, be made out and perfected, by the said —— day of —— next) *or* the said two terms of (*two*) hundred years, and (*five*) hundred years, or either of them, should on that day remain unassigned as aforesaid; *or* the same mortgage deed of the —— day of ——, 17 —, and all missing assignments, should not be delivered to the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; or such sufficient releases or acknowledgments as aforesaid, or the

and if a good title be made to tithes and lands taken in exchange by a given day;

outstanding terms assigned; and mortgage deed and missing assignments delivered;

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or evidence produced to shew that they are no incumbrances;

then purchaser to pay the amount of such valuation to the vendors.

But in case all the defects are not cleared by the given day,

ON A PURCHASE WITH A DEFECTIVE TITLE.

purchaser to invest the amount of the valuation of the timber in 3 *per cent.* Consols, in the names of mutual trustees, to accumulate;

evidence before mentioned, should not be produced; *Then* and in each, any, or either of such cases, he the said [*purchaser*], his executors or administrators, shall lay out or invest the amount of the said valuation of timber, in the purchase of three pounds *per centum* Consolidated Annuities, in the names of mutual trustees; who shall from time to time lay out and accumulate the dividends and interests thereof, *And* stand possessed of and interested in the stock so to be purchased, and the accumulations so to be made as aforesaid; UPON THE TRUSTS following, that is to say (*a*), UPON * TRUST, in case the said title to the said portion of tithes and commonable land should be so as aforesaid made out by the —— day of ——, 18—, and the said [*purchaser*], his heirs, appointees, or assigns, should have been suffered to hold and enjoy the same, and to receive the rents, issues, and profits thereof, in the mean time, for his and their own use and benefit, and should have had the said two terms of (*two*) hundred years and (*five*) hundred years, if existing, assigned in trust for him or them, as aforesaid, and the said mortgage of the —— day of —— 17—, and the missing assignments thereof, or the releases or acknowledgment before mentioned, delivered over to him, or such legal evidence produced as aforesaid; *To* transfer the said stock so to be bought, and the dividends in the mean time arising therefrom, unto them the said [*vendors*], their heirs, executors, administrators, or assigns: *But* if such title should not be made out and perfected by the said —— day of —— 18—; *Then* UPON TRUST, to transfer to the said [*purchaser*], his heirs, appointees, or assigns, so much of the said stock and dividends as will produce such a sum as the said portion of tithes and commonable lands shall be valued at, by two indifferent persons, who are to estimate the value according to the relative situation of the same, and considering that the said [*purchaser*] is owner of the said manor and estates; one of such indifferent persons to be named by the said [*vendors*], their heirs or assigns, and the other by the said [*purchaser*] his heirs,

Upon trust, in case defects are cleared by an extended certain day, and purchaser should peaceably enjoy in the mean time,

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to transfer the stock and the dividends to vendors.

But otherwise

Upon trust to transfer to purchaser so much of the stock as the tithes and lands shall be valued at, with purchaser's expenses.

[(*a*) See a precedent of trusts for investment &c., for the indemnity of a purchaser, *post*, Vol. 4, p. 294.]

ON A PURCHASE WITH A DEFECTIVE TITLE.

appointees, or assigns: *And* in case of such two persons not agreeing, then by a third person, to be chosen by the two persons so first chosen for that purpose; *Together* with any expenses that the said [*purchaser*], his heirs, appointees, or assigns, may be in the mean time put unto, in consequence of his not having his title now completed thereto: *And* the residue of the said stock and dividends (provided the same two terms should be previously assigned, if existing, and the missing deeds or releases, or acknowledgments, delivered as aforesaid, or such evidence as aforesaid produced), shall be thereupon immediately transferred to them the said [*vendors*], their executors, administrators, or assigns: *But*, * if it should happen that the said two terms of (*two*) hundred years and (*five*) hundred years, if existing, or either of them, should be still unassigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; or the said mortgage deed of the —— day of ——, 17—, and the missing assignments thereof, or any or either of them, or the releases or acknowledgments before mentioned, should not be delivered to him or them, or such legal evidence produced as aforesaid, on the said —— day of ——, 18—, *Then* such residue to remain vested in the trustees to be named as aforesaid, as an indemnity to the said [*purchaser*], his heirs, appointees, and assigns, against any loss or damage which he or they might or may otherwise sustain, by reason of the said two terms remaining unassigned, in trust for him and them as aforesaid, until both the said terms shall be assigned to a person or persons to be nominated by the said [*purchaser*], his heirs, appointees, or assigns, and to attend the inheritance, in case the same terms are now existing; *And also* as an indemnity to the said [*purchaser*], his heirs, appointees, or assigns, against any loss or damage which he or they might, or otherwise may sustain, by reason, or in consequence, of the said mortgage deed of the —— day of ——, 17—, or any subsequent assignments, not being now delivered to the said [*purchaser*] as a satisfied security, or otherwise, on account thereof, until all the same missing deeds, or the releases, acknowledgments, or evidences before-mentioned, shall be delivered or produced as aforesaid: *And* upon

and the residue of the stock and dividends, if title should be cleared, paid to vendors.

But if not

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then residue of stock to remain in trustees, as an indemnity to purchaser.

When indem-

ON A PURCHASE WITH A DEFECTIVE TITLE.

those things being severally done, or in case the same terms be not in existence, Then upon the last-mentioned indemnity being rendered unnecessary, and upon the said [*purchaser*], his heirs, appointees, or assigns, being reimbursed all damages and expenses, if any, which he or they may have sustained by reason of the said terms not having been assigned to the said [*purchaser*], his heirs, appointees, and assigns, and of the non-delivery of the same missing deeds upon the execution of these presents, or in any manner respecting the same deeds, such trustees may lawfully, and are hereby authorised, to transfer the same stock and dividends to the said [*vendors*], their executors, administrators, or *assigns. AND if it should happen, that a good, sure, and indefeasible title shall be made out and perfected to the said two third parts of tithes, and the said —— acres, —— roods, and—— perches, of commonable land, by the said —— day of——, 18—, but the said two terms, or one of them, shall then remain unassigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, as aforesaid; *or* the said missing deeds, or any of them, shall not be delivered as aforesaid; *or* the releases, acknowledgments, or evidences, shall not be delivered or produced as aforesaid; Then the said stock and dividends shall, notwithstanding such title being made as aforesaid, remain vested in the trustees to be named as aforesaid, as an indemnity to the said [*purchaser*], his heirs, appointees, and assigns, against any loss or damage which he or they might or may otherwise sustain, by reason of the said two terms remaining unassigned, in trust for him and them, as aforesaid, until both the same terms shall be assigned to a person or persons to be nominated by the said [*purchaser*], his heirs, appointees, or assigns, and to attend the inheritance; *And also* as an indemnity to the said [*purchaser*], his heirs, appointees, or assigns, against any loss or damage which he or they might or may otherwise sustain, in consequence of the said mortgage deed of the —— day of ——, 17—, or any subsequent assignment thereof, not being now delivered to the said [*purchaser*], as a satisfied security, or otherwise, on account thereof, until all the same missing deeds, or the releases, acknowledgment, or evidence before mentioned,

nity is rendered unnecessary, and purchaser reimbursed all damages on account of defect, to transfer stock to vendors.

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If the first defect be cleared, still the whole funds to be invested, as an indemnity against the other defects.

ON A PURCHASE WITH A DEFECTIVE TITLE.

shall be delivered or produced as aforesaid. And upon those several things being done; *And* the said [*vendor*], his heirs, appointees, or assigns, being reimbursed all damages and expenses, if any, which he or they may have sustained, by reason of the said terms not having been assigned, in trust for the said [*purchaser*], his heirs, appointees, or assigns, upon the execution of these presents, or by reason of the said mortgage of the —— day of ——, 17—, and any assignments not being delivered as aforesaid, as satisfied securities, such trustees may lawfully, and are hereby authorized, to transfer the same to the said [*vendors*], their executors, administra*tors, or assigns. And the said [*vendors*] do hereby for themselves, jointly and severally, and for their respective heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser*], his heirs, and assigns, That they the said [*vendors*], or one of them, his or her heirs, executors, or administrators, shall and will, at his or her own expense, by or before the —— day of ——, 18—, procure the said two several terms of (*two*) hundred years and (*five*) hundred years, so far as the same respects the said premises, in and by the said recited indenture of release, bearing even date with these presents, granted and released, to be legally and effectually assigned unto such person or persons as he the said [*purchaser*], his heirs, appointees, or assigns, shall for that purpose nominate and appoint, *Upon trust*, for the said [*purchaser*], his heirs, appointees, and assigns, and to attend the reversion, freehold, and inheritance of the same premises, in order to protect the same from all mesne charges and incumbrances, if any such there be; And also shall and will forthwith use their utmost endeavours to find the said mortgage of the —— day of ——, 17—, and all missing assignments thereof; and upon the same deeds, or any of them, being found, shall and will immediately deliver them to the said [*purchaser*], his heirs, appointees, or assigns, for his or their own use and benefit. In witness, &c.

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Covenant by vendors to procure the two terms to be assigned, upon trust for purchaser, his heirs, appointees, and assigns;

And to use their utmost endeavours to find the deeds missing, and deliver them to purchaser.

TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

AGREEMENT *by a Vendor to* REPURCHASE *Premises, if required by the Purchaser within a limited Period, in case the Title Deeds are not found in the mean Time.*

ARTICLES OF AGREEMENT *indented*, made, and entered into, the —— day of ——, in the year of our Lord, 18—, BETWEEN [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part.

Parties.

Recital of purchase,

WHEREAS the said [*purchaser*] hath purchased of the said [*vendor*], a certain messuage or tenement, garden, and premises, situate at —— in the county of ——, and the inheritance thereof in fee-simple, at or for the price or sum of —— thousand pounds; *And* by indentures of lease and release, bearing date on or about the —— and —— days of ——, instant, and made between the said [*vendor*], of the one part; and the said [*purchaser*], of the other part; the said [*vendor*] hath, in consideration of the said sum of —— thousand pounds, granted, released, and conveyed, or otherwise assured, the said messuage or tenement, garden, and premises, with their appurtenances, unto the said [*purchaser*], his heirs and assigns: AND WHEREAS the title deeds and writings relating to the said premises, have been lost or mislaid; and previously to the completion of the said purchase, and payment of the said sum of —— thousand pounds, the consideration for the purchase thereof, it was agreed between the said parties, that in case the said [*purchaser*], his heirs, appointees, or assigns, should at any time after the expiration of the term of (*three*) years, and within the term of (*nine*) years, to be computed from the date hereof, be desirous of selling the said premises, at or for the price or sum of [*purchase money*] thousand pounds; and in case the said [*purchaser*], his heirs, appointees, or assigns, should give unto the said

and conveyance in fee.

Recital of the loss of title deeds, and agreement for repurchase, in case they should not be found within a limited period.

[*vendor*], his heirs, executors, or administra*tors (*six*) calendar months' notice of such desire, then and in such case the said [*vendor*], his heirs, executors, or administrators, should, at the expiration of the said (*six*) calendar months for which such notice shall be given, if the whole of the said deeds and writings shall not have been previously found and delivered to the said [*purchaser*], his heirs, appointees or assigns, repurchase the same premises, at or for the price or sum of [*the present purchase-money*] —— thousand pounds. NOW THESE PRESENTS WITNESS, *and it is hereby agreed and declared* between and by the said parties hereto, and the said [*vendor*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said [*purchaser*], his heirs, appointees, and assigns, That in case the said [*purchaser*], his heirs, appointees, or assigns, should at any time after the expiration of (*three*) years, and within the space or term of (*nine*) years, to be computed from the date hereof, be minded and desirous to sell the said messuage, or tenement, garden, and premises, comprised in the said indenture of release, bearing even date herewith, and of such his or their desire, shall give unto the said [*vendor*], his heirs, executors, or administrators, or leave at his or their usual place of residence, (*six*) calendar months' notice in writing, Then and in such case, and at the expiration of the (*six*) calendar months, for which such notice shall be given, if the deeds and writings mentioned in the first schedule hereunder written should not previously thereto have been found, and delivered to the said [*purchaser*], his heirs, appointees, or assigns, whole and undefaced, he the said [*vendor*], his heirs, executors, or administrators, shall and will purchase the said messuage or tenement, garden and premises, of and from the said [*purchaser*], his heirs, appointees, or assigns, at or for the price or sum of —— thousand pounds: AND THE SAID [*purchaser*] doth hereby agree that, on payment of the said sum of —— thousand pounds, pursuant to the aforesaid agreement, he the said [*purchaser*], his heirs, appointees, or assigns, and all other persons claiming through or under him, shall and will, at the request, cost, and charges of the said [*vendor*], his heirs, executors, or ad-

TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

Testatum.

Covenant by vendor, that if purchaser should require him to purchase premises within a limited period, before the deeds are found,

he will purchase accordingly, at the sum now paid by purchaser.

Agreement by purchaser to convey accordingly;

TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

ministrators, convey and assure the said messuage or tenement, garden and premises, with the appurtenances, unto and to the use of the said [*vendor*] and his heirs, or as he or they shall direct or appoint, free from all incumbrances made, done, or committed by the said [*purchaser*], his heirs, appointees, or assigns: *And further*, that in case the said [*vendor*], his heirs, executors, or administrators, should be called upon to repurchase the said messuage or tenement, garden and premises, in pursuance of the agreement hereinbefore for that purpose contained, the same premises shall, at the time of such repurchase, be in good and tenantable repair; *and*, upon the completion of such purchase, the same premises, together with the several fixtures mentioned in the second schedule hereunder written, shall be delivered to the said [*vendor*], his heirs or assigns, in as good order and condition, in all respects, as the same now are: PROVIDED ALWAYS, that these presents shall not, nor shall the said recited indentures of lease and release, be considered, construed, or taken to be a mortgage or security for money, or any thing in the nature of a mortgage or security for money; nor shall the same give, or be construed to give, unto the said [*vendor*], his heirs, executors, administrators, or assigns, any right, title, or equity, to redeem the said premises, upon payment of the said purchase money, or sum of —— thousand pounds, with interest: PROVIDED ALSO, that in case the said deeds and writings, mentioned in the said first schedule hereunder written, should, previously to any such notice as aforesaid, or to the expiration of the said (*six*) calendar months, for which such notice shall be given or left as aforesaid, be found and delivered to the said [*purchaser*], his heirs, appointees, or assigns, whole and undefaced; Then, and in such case, these presents, and every thing herein contained, shall cease, determine, and be void: IN WITNESS whereof the parties above named have hereto set their hands and seals, the day and year first above written.

Premises at the time of re-purchase, to be in good repair

and fixtures in schedule, in as good state as at present.

Agreement not to be deemed a mortgage.

In case the deeds should be delivered, agreement to be void.

THE FIRST SCHEDULE to which the above-written agreement refers.

THE SECOND SCHEDULE to which the above-written agreement refers.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

AGREEMENT *between the Vendors and Purchaser of an Estate in Fee-Simple, to refer to Arbitration or Umpirage, the Question whether certain Lands were included in the Contract; and what Compensation the Vendor should receive, in consequence of part of the Premises being discovered to be of a Leasehold instead of a Freehold Tenure:* very specially drawn.

ARTICLES OF AGREEMENT indented, made, and concluded the —— day of ——, 18—, BETWEEN [*three vendors*], of &c., (devisees in trust, and executors named in the last will and testament of [*testator*], late of, &c., esquire, deceased), of the one part; and [*purchaser*], of &c., of the other part. Parties.

WHEREAS the said [*vendors*], as devisees in trust as aforesaid, did in or about the year 18—, by writing under their hands, contract with the said [*purchaser*] for the absolute sale to him of the several manors of —— and ——; and of divers farms, lands, tenements, and other hereditaments, situate or being in or near the county of ——, and the inheritance thereof, in fee-simple, at or for the price or sum of —— pounds; *Among* which hereditaments so contracted to be sold are included a farm, and lands, called [*Acre*] Farm; and also certain lands called [*Evergreen*] Lands; and also a house and gate-room hereinafter mentioned; which sale so made to the said [*purchaser*] hath not yet been completed. AND WHEREAS the whole of the said farm and lands called [*Acre*] Farm, and now let upon lease, under the yearly rent of —— pounds, is included in the contract for the sale, so agreed to be made to the said [*purchaser*] as aforesaid; and as the said [*purchaser*], at the * special instance and request of the said [*ven-* Recital of contract for sale of certain premises in fee. Recital of agreement to relinquish part of premises, and allow proportion of rent, on having a compensation.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

dors], hath consented and agreed, that such part of the said farm, called [*Acre*] Farm, and containing —— acres, —— roods, and —— perches, or thereabouts, as is specified in the schedule hereunder written, shall be discharged from the said recited contract, in consideration that the said [*purchaser*] shall be allowed out of the said purchase-money, a compensation for the loss of the said —— acres, —— roods, and —— perches of land, the purchase of which shall be so relinquished by the said [*purchaser*] as aforesaid; and that the said [*purchaser*] should have and be entitled to the yearly rent or sum of [*apportioned rent*] pounds, to be paid and payable, in respect of the remaining part of the said farm and lands, called [*Acre*] Farm, which is retained by, and intended to be conveyed to the said [*purchaser*], as and for the apportioned part of the aforesaid yearly rent of [*whole rent*] pounds. AND WHEREAS it hath been agreed between the said [*vendors*] and [*purchaser*], that the value of the lands, mentioned and specified in the schedule hereunder written, being part of [*Acre*] Farm aforesaid, shall be ascertained by two indifferent persons, one of whom shall be chosen by the said [*vendors*] and the other of them by the said [*purchaser*]; and that in case such two persons should not agree in their valuation, then the same shall be ascertained by such one person as the said two first referees shall for that purpose appoint; and the value of the said lands so to be ascertained shall be deducted by the said [*purchaser*], out of his said purchase-money, by way of compensation. AND WHEREAS by indenture, dated on or about the —— day of ——, 17—, and made between [*one of the lessors*], of &c., widow, of the first part; [*the other lessor*], of &c., spinster, of the second part; and [*lessee*], of &c., of the third part; *Reciting* a license bearing date the —— day of ——, 17—, under the hand of the deputy steward of the manor of ——, to the said [*first named lessor*], to let to farm to the said [*lessee*] her moiety of the cottage at ——, in the manor aforesaid, for the term of (*twenty-one*) years from the feast of (*Saint Michael the Archangel*) then last, if the said [*first lessor*] should so long live; *And also* a license bearing date the —— day of ——, 17—, under the *hand of the said deputy steward of the same manor, to the

Recital of agreement to leave value of premises relinquished to arbitration,

or umpirage.

Recital of lease of copyhold lands by two tenants in common for life, for twenty-one years, if they should respectively so long live, with separate licenses of deputy steward.

said [*first lessor*], to let to farm to the said [*lessee*], a moiety of one barn and gate-room, and half a yard of land, called the —— containing —— acres; *And also* a moiety of a close of land called ——, containing —— acres; *And also* a moiety of those four closes of land, containing —— acres, called ——, in the manor aforesaid, for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*) then last, if the said [*first lessor*] should so long live: *And also*, a license bearing date the —— day of ——, 17—, under the hand of the said deputy steward, to the said [*second lessor*], to let to farm unto the said [*lessee*] her moiety of the aforesaid cottage in ——, for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*) then last, if the said [*second lessor*] should so long live; *And also*, a license bearing date the —— day of ——, 17—, under the hand of the said deputy steward, to the said [*second lessor*], to let to farm to the said [*lessee*], her moiety of the hereinbefore mentioned barn and gate-room, and half a yard of land, called ——; *And also*, one moiety of a close of land, called ——, containing —— acres; *And also*, a moiety of the said four closes of land, called ——; for the term of (*twenty-one*) years, from the feast of (*Saint Michael the Archangel*) then last past, if the said [*second lessor*] should so long live: *And further reciting*, that the said [*lessors*] were entitled to one moiety each, of and in *All that* meadow or pasture ground, containing by estimation —— acres, lying and being in —— aforesaid, and then in the tenure or occupation of ——, during the term of their natural lives; *It is witnessed*, that the said [*lessors*] did demise, grant, and to farm let unto the said [*lessee*], *All* their aforesaid undivided moieties of and in the several copyhold messuages and tenements above mentioned; *And* all their aforesaid undivided moiety, or half part each, of and in *All that* meadow or pasture-ground above mentioned; All which premises were then in the tenures or occupations of the said [*lessee and others*]; *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from the feast of (*Saint Michael the Archangel*) then last past, for the term of (*twenty-one*) *years, *if* the said [*first lessor*] and [*second lessor*] should

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

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ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

so long live; *At* the yearly rent of —— pounds, payable half-yearly, *as* therein mentioned; *And subject* to the covenants and agreements therein contained. AND WHEREAS the said lease granted to the said [*lessee*], as aforesaid, was so granted to him in trust for the said [*testator*], deceased. AND WHEREAS the said [*purchaser*] contends, that the premises hereinbefore mentioned to be comprised in the said indenture of lease, of the —— day of ——, 17 , are included, or were intended to be comprised in the contract for sale, so made between him and the said [*vendors*], as aforesaid; *and* the said [*purchaser*] claims a compensation, to be deducted out of his said purchase-money, and the amount thereof to be settled as hereinafter mentioned, for the difference in value in the same premises, between a freehold and leasehold tenure; *But* as the premises are not by express words named in the said contract for sale, the said [*vendors*] contend, that the said leasehold premises do not, nor were intended to, comprise any part of the estate, so contracted to be sold to the [*purchaser*], as aforesaid. AND WHEREAS in order to put an end to all disputes between the said parties, touching the said leasehold premises, it hath been agreed between them, that it shall be left to two indifferent persons, to determine upon the statements of the parties, and upon such evidence or information, by such other ways and means as they shall think proper, whether the aforesaid leasehold premises were originally intended, or ought, under the circumstances of the case, to be included or considered as included in the aforesaid contract; one of which said persons to be chosen by the said [*vendors*], and the other by the said [*purchaser*]; *And* in case such two persons cannot agree in their determination, then the same shall be referred to, and determined by such one person, as the said two referees shall for that purpose appoint. AND WHEREAS a similar dispute has arisen between the said parties, respecting a freehold piece or parcel of ground, called the [*coppice*], near the ——, and containing —— acres, —— roods, and —— perches, it being contended by the said [*purchaser*], that the same is, or ought to be included, in his said contract; and it hath been in like manner agreed, that it shall be *left to the said two persons, or their umpire, to deter-

Recital, that lease was granted in trust for testator.

Recital of difference between vendors and purchaser, whether leaseholds were included in contract.

Recital of agreement to refer same to arbitration,

or umpirage.

Recital of a similar dispute as to other lands.

Recital of agreement, to leave same to arbitration.

mine whether the same were originally intended, or ought, under the circumstances of the case, to be considered as included in the said contract. And whereas by indenture, dated on or about the —— day of ——, 16—, and made between [*lessor*], of the one part; and [*lessee*], of the other part, *For the consideration* therein expressed, the said [*lessor*] *Did* grant, bargain, sell, and demise unto the said [*lessee*], *All that* messuage or tenement, with the barn and gate-room thereunto adjoining and belonging, situate, lying, and being, in the parish of ——, in the said county of ——, then late in the occupation of ——, with the appurtenances; *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, for and during the term of —— thousand years, from the date thereof, under the yearly rent of [*a pepper corn*]; *And* by mesne assignments and other acts, good and available in the law, the said messuage or tenement, with the barn and gate-room thereunto adjoining and belonging, became vested in the said [*testator*], deceased. And whereas by indenture dated on or about the —— day of ——, 17—, and made between the Dean and Chapter of the Cathedral Church of ——, of the one part; and [*lessee*], of the other part; *The* said Dean and Chapter, for the consideration therein mentioned, *Did* demise, grant, and to farm let, unto the said [*lessee*], *All that* barn, and all those several lands and tenements, with the appurtenances, called (*Evergreen*), situate, lying, and being in the parish of ——, in the county of ——, containing by estimation —— acres, that is to say; *All those* two pieces of meadow ground, with a barn standing in one of them, lying between a meadow belonging to the manor of ——, on the north part, a meadow formerly of —— deceased, on the north-west part, and a close of arable land, part of those lands called (*Evergreen*), on the south-west part, containing by estimation —— acres; two closes of arable land, with a lane, there called (*Evergreen*) Lane, having —— park on the east, and one of the aforesaid two enclosures of meadow ground on the north part, and one of the last-mentioned two closes of arable on the east part, containing by estimation —— acres; *To hold* *the same unto the said [*lessee*], her executors, administrators, and assigns, from the feast-day of (*Saint Michael*

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

Recital of lease of other premises for —— thousand years;

by mesne assignments vested in testator.

Recital of lease of other premises from a Dean and Chapter,

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

the Archangel) then last past, for the term of (*twenty-one*) years, *Under* the yearly rent, and subject to the covenants therein contained, and on the part of the lessee to be paid, done, and performed. AND WHEREAS by mesne assurances and other acts, good and available in the law, the said barn, lands, and premises, comprised in the said lastly recited indenture of lease, became vested in the said [*testator*], deceased, for the residue of the said term of —— years. AND WHEREAS the premises hereinbefore mentioned to be comprised in the said recited indentures, of the —— day of ——, 16—, and the —— day of ——, 17—, and the terms of —— thousand years, and (*twenty-one*) years, thereby respectively created, are admitted by the said [*vendors*] to form a part of the estate and hereditaments, so contracted to be sold to the said [*purchaser*], as aforesaid; *But* inasmuch as the hereditaments so contracted to be purchased by the said [*purchaser*], were considered by him and the said [*vendors*], to be of a freehold tenure, in fee-simple; and the amount of the consideration money to be paid by the said [*purchaser*], for the purchase of the same, having been calculated upon the supposition, that the whole of the said estate and hereditaments were to be conveyed to him in fee-simple, it hath been agreed between the said parties hereto, that the said [*purchaser*] shall be entitled to retain by way of compensation, out of his said purchase-money the difference in value, in respect to the premises comprised in the said recited indentures of demise or lease, of the —— day of —— 16—, and —— day of —— 17—; and also in respect to the premises comprised in the said indenture of lease of the —— day of ——, 17—, in case it should be ultimately determined, that the same ought to be considered as included in the said contract for sale as aforesaid, —between the leasehold tenure, by which the same premises are respectively holden, and the inheritance in fee-simple of the same premises respectively; and that the amount of such difference in value shall be fixed and determined by two indifferent persons, one of whom shall be chosen by the said [*vendors*], and *the other by the said [*purchaser*]; and that in case such two persons should not agree in their valuation, then the same shall be fixed

by mesne assignments vested in testator.

Recital, that premises comprised in two last recited leases, are part of the premises contracted to be purchased as freehold.

Recital of agreement, to allow compensation on account of difference between leasehold and freehold tenure, and to leave same to arbitration or umpirage.

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and determined by such one person as the two first referees shall for that purpose appoint. And whereas, in pursuance of the said agreement, the said [*vendors*] have nominated [A. B.] of &c., and the said [*purchaser*] hath nominated [C. D.] of &c., referees, for the purpose of arbitrating and determining the said matters and things hereinbefore mentioned. Now these presents witness, that in consideration of all and singular the premises, *It is hereby agreed and declared*, between and by the said parties hereto, in manner following, that is to say; That the said [*arbitrators*] shall be arbitrators for determining the several matters and things in these presents referred to them, and that they shall determine the same respectively, as soon as conveniently may be after the execution of these presents; And that in case they should not agree to determine any matter or thing, matters or things, hereby referred to them, the matter or thing, matters or things, of which they shall not agree, shall be referred to, and determined by, such one person as they, the said [*arbitrators*], shall for that purpose appoint; and such appointment of umpire, to be from time to time made as soon as conveniently may be, after such difference of opinion shall from time to time arise: That the value of the lands mentioned in the schedule hereunder written, being part of (*Acre*) Farm aforesaid, calculating such value at —— years' purchase, at the improved yearly rent thereof, shall be forthwith, as soon as may be, ascertained and determined by the said [*arbitrators*], or, in case they differ, by their umpire, to be chosen as aforesaid: That for the purpose of making such valuation, the said referees shall previously fix and determine, by such ways and means, and upon such information, as they or he shall think fit, or deem proper, the best and most improved yearly rent, at which the said lands mentioned in the said schedule, ought to be, or to have been, or might have been let, at the date of these presents; and the calculation of such value shall be made upon such improved rent: That the value so to be fixed and ascertained by the said referees, or their umpire, shall be allowed to, and re*tained by the said [*purchaser*], by and out of his said purchase money, or sum of —— pounds: And that the said [*purchaser*], his heirs

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

Recital of nomination of referees.

Testatum.

Appointment of arbitrators.

In case of difference, arbitrators to appoint umpire.

Land relinquished, to be calculated at —— years' purchase, by arbitrators or umpire.

Improved annual rent to be ascertained,

and the value allowed purchaser.

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ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

and assigns, shall be entitled to the yearly rent of [*apportioned rent*] pounds, as the apportioned part of the aforesaid yearly rent of [*whole rent*] pounds, to be payable in respect to so much, and such part, of (*Acre*) Farm aforesaid, as are not mentioned and comprised in the said shedule hereunder written: THAT the said [*arbitrators*], or, in case they differ, their umpire, to be chosen as aforesaid, shall, as soon as conveniently may be after the execution of these presents, determine whether the leasehold premises, hereinbefore mentioned to be comprised in the said indenture of lease of the —— day of ——, 17—, and the said freehold [*coppice*], near the ——, or either of them, and any and what part or parts thereof respectively are or is, or ought to be considered as included in, and bound by, the said contract for sale so entered into between the said parties hereto as aforesaid: THAT the said [*arbitrators*], or, in case they differ, their umpire, to be chosen as aforesaid, shall forthwith, as soon as may be, ascertain and determine what is the difference in value, in respect to the premises holden under or by virtue of the said indentures of lease or demise, of the —— day of ——, 16—, and the —— day of ——, 17—; and also in respect to the premises comprised in the said lease of the —— day of ——, 17—, in case the said last-mentioned premises should be determined to be bound by and included in the said contract for sale as aforesaid—between the leasehold tenures, under or by which the premises comprised in the same indentures are respectively holden, and the fee-simple of the same premises respectively; considering in the calculation of such difference in value, the duration of the several terms of years, and the rents, covenants, provisoes and agreements, under, or by which the said leasehold premises are respectively holden, by virtue of the said indentures of lease respectively: THAT the amount and value so to be awarded, fixed, and determined, as the difference in value between a leasehold tenure, and a freehold tenure in fee-simple, shall be retained and deducted by the said [*purchaser*], his heirs, executors, administrators or assigns, by way of compensa*tion, by and out of the said purchase-money or sum of —— pounds: THAT the award and determination of the said [*arbitra-*

Referees, or umpire, to ascertain land included in contract,

and determine difference in value, between leasehold and freehold tenure.

Difference in value to be retained by the purchaser.

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tors], or of their umpire, in or about the premises, or any of them, shall be final and conclusive, between and upon the said [*vendors*], and all persons claiming through or under the said [*testator*], deceased; and the said [*purchaser*], his heirs, executors, administrators and assigns: THAT for the purposes aforesaid, it shall be lawful for the said [*arbitrators*], or their umpire, to obtain information upon or in respect of the premises hereby referred, or any of them, either by the statements of the parties hereto, or any of them, by parol or written evidence, or by such other ways or means, as they or he shall in their or his judgment think most advisable, or deem most applicable to the nature and circumstances of the case: THAT in case the said [*arbitrator*, A. B.] should die, or refuse, or become incapable to act as arbitrator, before the whole of the premises hereby referred shall be determined by the said [*arbitrators*], or their umpire, *Then* the said [*vendors*], or the survivors, or survivor of them, or the heirs, executors, administrators, or assigns of such survivor, shall forthwith thereafter nominate and appoint some other person to be arbitrator or referee, in the stead and place of the said [A. B.]; and so in like manner upon the decease or neglect, or refusal to act, of any arbitrator succeeding to the place of the said [A. B.] (*add a similar clause as to* [C. D. *purchaser's*] *arbitrator*): THAT every arbitrator, so to be appointed as a substitute for the said [A. B.] or [C. D.] or any succeeding arbitrator, shall, as to such of the premises as shall not at the time of his nomination and appointment be actually determined, or referred to an umpire, have the same powers and authorities as are hereby vested in the arbitrator, in or to whose place he shall come or succeed: THAT the expense of preparing and executing these presents, (and a duplicate hereof), and of making such arbitration or award as aforesaid, or otherwise attending the submission hereby made, shall be borne and paid by the said parties in the proportions following, that is to say; one moiety thereof by the said [*vendors*], as trustees as aforesaid; and the other moiety by the said [*purchaser*]: AND LASTLY, the submission and agreement *hereby made, shall be made a rule of his Majesty's Court of ——, at Westminster. IN WITNESS whereof the said

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

Award of arbitrators or umpire to be final.

Arbitrators, or umpire, to obtain evidence by parol, or in writing.

In case of death of vendors' arbitrator before award, they to appoint another.

Same as to purchaser's.

New arbitrators to have same powers as the old arbitrators.

Expense of arbitration to be paid equally.

Submission to be made a rule of court.

ON PURCHASE, TO REFER DISPUTES TO ARBITRATION.

parties have hereto (interchangeably) set their hands and seals, the day and year first above written.

Schedule.

THE SCHEDULE, to which the above written agreement refers.

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

AGREEMENT *for the Sale of a House, Bakehouse, Water Grist Mill, and Premises, from two Vendors, in which a* SURETY *joins for the Purchaser, the Consideration being a gross Sum of Money, and* TWO LIFE ANNUITIES *to the Vendors, to be secured upon the Estate, and by the Bond of the Purchaser and four Sureties; the* FIXTURES *to be taken* AT A VALUATION; *and if Purchaser should die before the Conveyances are executed, the Surety agrees to become the Purchaser upon the same Terms.*

Parties.

THIS AGREEMENT, made and entered into the —— day of ——, 18—; BETWEEN [*vendor*], of &c., and [*other vendor*], of &c., sister of the said [*vendor*], of the one part; and [*purchaser*], of &c., and [*surety*], of &c., of the other part;

Testatum.

WITNESSETH, that the said [*vendors*] have sold unto the said [*purchaser*], and that the said [*purchaser*] hath purchased of the said [*vendors*], in fee-simple, ALL THAT messuage, bakehouse, and premises, situate at —— aforesaid, and now in the occupation of &c.; AND ALSO all those water grist mills, mill-house, and premises, situate at ——, in the parish of ——, in the said county of ——; All which said last-mentioned premises are now in the occupation, &c. AND the price agreed *upon, for the purchase of the said premises, is the sum of —— hundred pounds, of lawful money of Great Britain; *and* an annuity

Parcels.

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Price, a sum in gross, and two annuities for lives of vendors.

of —— pounds, of like money, to be paid to the said [*vendor*] for his life; *and* another like annuity of —— pounds, to be paid to the said [*other vendor*], for her life: *Which* said sum of [*purchase money*] —— hundred pounds, is to be paid to the said [*vendor*] on or before the —— day of —— next, with interest, after the rate of five pounds *per centum per annum*, for the same, to commence from the —— day of —— next; *and* which said respective annuities are also to commence from the said —— day of —— next, and to be payable quarterly, clear of all deductions whatsoever, with a proportionate part of the last quarterly payment of each of the said respective annuities, up to and until the respective days of the deaths of the said [*vendor*] and [*other vendor*]: And the said respective annuities are to be secured upon the said premises agreed to be purchased; and by the joint and several bonds of the said [*purchaser*] and [*surety*], [*and three other sureties*] (*a*): The dough troughs, flour binns, and oven doors, of the bakehouse, and the different machinery and utensils belonging to the mills only, are to be included in the purchase, as part of the freehold: And *it is further agreed* that the said [*purchaser*] shall take, at a valuation to be made by —— and ——, both of, &c. (*auctioneers*); and if they should disagree in their valuation, then by a third person, to be chosen by the said [*valuers*], all the brewing utensils and barrels, and the beer therein; and also the grates in the house; and the several kinds of fuel; and likewise the three horses and cart, at the mill, and the hay-rick there; and all other the effects at the mill, belonging to the said [*vendor*]; the amount of which valuation is to be paid by the said [*purchaser*] to the said [*vendor*] within the space of [*ten*] days next after the same shall be ascertained, and the said [*purchaser*] shall have notice thereof; *and* which valuation is to be made within (*five*) days from the date hereof, if the said [*valuers*], or their umpire, can make the same within that time: And *it is further agreed*, that the expenses of abstracts, and making out the title to the premises, and of *securing the afore-

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

The sum in gross to be paid on a given day, with interest, to commence on the same day as the annuities.

Annuities to be secured on premises, and by bonds of purchaser and his sureties.

Certain articles only, to be included as part of the freehold.

Purchaser to take at a valuation by two persons, or umpire, all brewing utensils, grates, &c.

Valuation to be made within five days.

Expenses of abstracts, &c. and securing annuities, &c. to be paid equally by vendor and purchaser;

(*a*) *Vide* Vol. 2, 356 (*p*).

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

said annuities, and of the said annuity bonds, and registering the several memorials thereof (*b*), as well as the expenses of and attending the completion of the conveyance of the said premises, and the bond for the —— hundred pounds, hereinafter mentioned, shall be paid and defrayed by and at the equal costs of the said [*vendor*] and the said [*purchaser*]; *But* the expense of a legacy receipt for the legacy to the said [*other vendor*], charged upon the said premises by her brother [A. B.'s] will, is to be paid by the said [*other vendor*] and [*vendor*], or one of them: *And* the said [*vendor*] is also to be at the charge of a fine, if one should be deemed necessary by counsel: AND *it is also agreed* by and between the said parties hereto, that the said [*purchaser*] shall enter upon the business of the (bakehouse and mill) on (*Monday*) next; *and* that the conveyance of the said premises, and the securities for the said annuities, shall be made and executed on or before the —— day of —— next; AND that the said [*purchaser*] and [*surety*] shall, upon the execution of the said conveyance, give their joint and several bond to the said [*vendor*], for the due payment of the said [*purchase money*] —— hundred pounds, and the interest thereof, on or before the said —— day of —— next: *In which* said bond, the said [*purchaser*] and [*surety*] do hereby promise and agree with the said [*vendor*], that the said [*three other sureties*] shall, at the same time, join with them the said [*purchaser*] and [*surety*]: AND ALSO that a sum not less than —— hundred pounds shall, at the costs of the said [*purchaser*], be always kept assured, in the names of the said [*purchaser*] and [*vendor*], upon the said messuage, bakehouse, and premises in —— aforesaid; *and* a sum not less than —— hundred pounds shall, at the like costs of the said [*purchaser*], be always kept assured in like manner upon the said water-mills, house, and premises thereto belonging, in the parish of ——, aforesaid, in one of the fire-assurance offices in London, during the lives of the said [*vendor*] and [*other vendor*], and the survivor of them, to be applied in rebuilding or repairing the said respective premises, if all,

Receipt for legacy, charged on estate, to be paid by vendors;

Fine, if necessary, to be paid by vendor.

Purchaser to enter immediately, and conveyance, &c. to be made at a future period;

Upon execution of which, purchaser and surety to give bond;

and procure three others to join as sureties.

A certain sum to be insured on premises.

(*b*) *Sed vide* Vol. 2, 325.

FOR SALE OF MILL, &c. PARTLY IN CONSIDERATION OF ANNUITIES.

Agreement by purchaser and his surety to fulfil contract.

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or any part of them, should be burnt down or damaged by fire in the mean time: AND for the better * and more punctual performance of this agreement, on the part of the said [*purchaser*], they the said [*purchaser*] and [*surety*] do, and each of them doth hereby, for themselves and himself, their and his heirs, executors, administrators, and assigns, covenant and agree with the said [*vendors*], and each of them, their and each of their executors, administrators, and assigns, that they the said [*purchaser*] and [*surety*], or one of them, their or one of their executors, administrators, or assigns, shall and will well and truly pay, fulfil, and perform, such payments, conditions, and parts of the aforesaid agreement, which are or ought to be paid, done, and performed by and on the behalf of the said [*purchaser*], according to the true intent and meaning hereof: PROVIDED ALWAYS, that if the said [*purchaser*] should happen to die, before the said conveyance shall be made and executed, *Then* the said premises shall be conveyed to the said [*surety*], in fee-simple, in the same manner, and under the same conditions, as by the former part of this agreement they are intended to be conveyed to the said [*purchaser*]. IN WITNESS whereof the said [*vendors*], and the said [*purchaser*], and [*surety*], have hereunto set their hands and seals, the said —— day of ——, 18—.

If purchaser die before conveyance executed, then surety to complete purchase, &c.

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

AGREEMENT *for Sale and Purchase of a* MANOR, FISHERY, &c., *in Fee (except a small part which is Leasehold): part of the Purchase Money is to be paid, and the Remainder secured by the Bond of the Purchaser and a Mortgage of the Premises sold; or by Assignment of a Mortgage of other Premises, if the Trustees of the Marriage Settlement of the Vendor should be enabled to accept that security; and Agreement by Purchaser that Persons to be entitled under an intended Settlement of the Estate purchased, shall enter into a Bond for securing the regular Payment of the Interest, during the Time they shall be in Possession: and the Vendor covenants to make out Title, levy Fines, &c. and procure Act of Parliament, if necessary: with special Provisions as to Errors in Description.*

ARTICLES OF AGREEMENT indented, made, concluded, and fully agreed upon, this —— day of ——, 18—; BETWEEN [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part.

Parties.

Covenant by vendor to execute conveyances of premises before a certain day.

FIRST, the said [*vendor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, to and with the said [*purchaser*], his heirs and assigns, that he the said [*vendor*], or his heirs, and all other persons, having any estate or interest in the hereditaments hereinafter mentioned, shall and will, on or before the *(fifth)* day of *(April)* next, by such conveyances and assurances in the law, as counsel shall advise, well and effectually convey and assure, unto and to the use of the said [*purchaser*], his heirs and assigns, or to whom he or they shall direct or appoint, in fee-simple (*except* as to

the leasehold close hereinafter described), and free from all incumbrances whatsoever: ALL THAT the manor of ——, in the said county of ——, with the rights, royalties, members, and appurtenances thereto belonging; *And also* ALL THAT the right of fishery in the river ——, of and belonging to the said [*vendor*]; *And also* ALL and singular the messuages, &c.; *All* which said hereditaments and premises are freehold (save and except one close of land or ground, containing about —— acres, which is held by lease from &c.), and contains in the whole —— acres, —— roods, and —— perches, or thereabouts; *Together* with all and singular the rights, members, and appurtenances thereto belonging, (*save and except* a certain small piece of waste ground adjoining to and on the west of the said river ——, near to the water-mill in —— aforesaid, containing about —— roods): IN CONSIDERATION whereof, the said [*purchaser*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*vendor*], his heirs, executors, administrators, and assigns, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay or secure unto the said [*vendor*], his heirs, executors, administrators, or assigns, the sum of —— thousand —— hundred pounds, of lawful money of Great Britain, for the purchase of the manor, hereditaments, and premises before mentioned, in manner and form following; namely, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*vendor*], his heirs, executors, administrators, or assigns (*a*), the sum of —— thousand —— hundred pounds, in part thereof, on the said (*fifth*) day of (*April*) next, upon having such conveyances and assurances made and executed as aforesaid: AND that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will secure the further *sum of —— thousand pounds, the remainder of the said purchase money, with

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

Covenant by purchaser to pay, or secure purchase money, *viz.*

Part thereof upon execution of deeds,

and secure remainder by his bond and by a mortgage of the premises sold.

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(*a*) If the premises sold be in settlement, with a power of sale, &c. say, "or to the person or persons entitled to the receipt or payment of the said purchase money,"

PREMISES SOLD IN SETTLEMENT, WITH POWER OF SALE, &c.

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

interest thereon from the said (*fifth*) day of (*April*), by the bond of the said [*purchaser*], and also by a mortgage of the said manor, hereditaments, and premises, unto the said [*vendor*](*b*), either in fee or for years, as his counsel shall advise; and to be made payable on the (*tenth*) day of [*144] (*October*) next (*c*): And *it *is hereby further covenanted*

PREMISES SOLD IN SETTLEMENT.

(*b*) If the premises sold are in settlement, &c., say,

" or to his trustees,"

Residue of purchase money to be secured by assigning a mortgage of other premises.

(*c*) If the residue be to be secured by assigning a mortgage of other premises, and the premises sold be in settlement, say,

" by assigning unto the said [*vendor*], his executors, administrators, or assigns, (or to his trustees), by such ways and means as counsel shall advise, a mortgage of certain estates of and belonging to [*mortgagor*], of &c., for securing the like sum of —— thousand pounds unto the said [*purchaser*], (or to his trustees); (*provided* the said [*vendor*], or his said trustees, are enabled to accept and take such assignment, as a security for the said sum of —— thousand pounds, part of the said purchase-money, in obedience and conformity to the trusts of any existing settlement of the said manor, hereditaments, and premises, or otherwise): And that he the said [*purchaser*], and the person and persons now in being, who shall be entitled to any estate in remainder of and in the said manor, hereditaments, and premises, under and by virtue of the conveyance to be made thereof, or the trusts of any intended settlement thereof, shall and will enter into a bond, with a sufficient penalty, unto the said [*vendor*], (or his said trustees), for securing and guarantying, during the time of their being respectively in possession of the said manor, hereditaments, and premises, the due and regular payment of the interest of the said sum of —— thousand pounds, at and after the rate of five pounds for one hundred pounds for a year, half-yearly, during the continuance of the same sum on that security, unto the person or persons who shall from time to time be entitled to receive the same interest, by virtue of such assignment: (But in case the said [*vendor*], (or his said trustees), should

if vendor or his trustees are enabled to accept same.

Purchaser, and those entitled under any settlement to be made of the estate sold, to give a bond for securing payment of interest on mortgage.

If vendor, or his trustees, should

and agreed, that the said [*purchaser*], his heirs or assigns, shall enter into possession, and to the receipt of the rents and profits of the said manor, hereditaments, and premises, upon and from the said (*fifth*) day of (*April*) next. AND *it is further covenanted and agreed*, that the said [*vendor*], his heirs, executors, or administrators, shall, at his or their own expense, make out a good and clear title to the said manor, hereditaments, and premises, and levy a fine, or suffer a recovery thereof if necessary, and also procure assignments of all such outstanding terms, or other incumbrances, as shall or may be subsisting upon the said manor, hereditaments, and premises; *And* in case an act of Parliament should be necessary for perfecting the said title, THEN that the said [*vendor*], his heirs or assigns, shall use his and their utmost endeavours to procure the same, and bear and pay the whole expense thereof: AND that he the said [*purchaser*], his heirs or assigns, shall pay the expense of the conveyance of the said manor, hereditaments, and premises so to be made to him or them, as aforesaid (*d*). IN WITNESS, &c.

FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

Purchaser to have possession, and receive rents from a certain day.

Lastly, seller to make out title at his own expense; and levy fines, suffer recoveries, procure assignment of terms, and act of Parliament, if necessary.

Purchaser to pay for his conveyance.

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not be so enabled or authorized to accept and take such assignment of the said mortgage, as a security for the said sum of —— thousand pounds, and interest, as aforesaid, *Then* he the said [*purchaser*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, the said sum of —— thousand pounds to the said [*vendor*], his heirs, executors, administrators, or assigns, or otherwise secure the same, to the approbation and satisfaction of the said [*vendor*], (or his said trustees)."

not be enabled to accept assignment of mortgage as a security, purchaser to pay, or otherwise secure the same.

(*d*) It may be added,

" AND *further*, that any trifling error or omission respecting the quantity, or other description of the said premises, shall not vacate this agreement, but in such case an abatement shall be made out of the said purchase-money, or some other equivalent shall be given; and in case the said parties should disagree thereon, the same shall be referred to arbitration, or arbitration and umpirage."

Trifling errors not to vacate contract.

*Where an estate is sold in one lot, either by private contract or public sale, and the vendor has not a title to the whole estate, he cannot enforce

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FOR SALE IN FEE, PART OF THE MONEY SECURED BY MORTGAGE.

the contract at law (*Tomkins* v. *White*, 3 Smith, 435), unless perhaps a separate value was put on different parts of the estate, in which case the contract in favour of justice may be considered distinct. At law, neither can a vendor, on an entire contract, recover part of the purchase money, where he cannot make a title to the whole estate sold; nor would a purchaser be suffered in a court of law to say, that he would retain all of which the title was good, and vacate the contract as to the rest; such questions being subjects only for a court of equity. *Johnson* v. *Johnson*, 3 Bos. & Pull. 162.

At law a contract cannot be enforced *pro tanto*.

Contrà, in equity.

But if the part to which the seller has a title was the purchaser's principal object, or equally his object with the part to which a title cannot be made, and is itself an independent subject, and not likely to be injured by the other part, equity will compel the purchaser to take it, at a proportionate price. And in these cases it will be referred to the Master, to inquire, "whether the part to which a title cannot be made, is material to the possession and enjoyment of the rest of the estate." *M'Queen* v. *Farquhar*, 11 Ves. Jun. 467; *Knatchbull* v. *Grueber*, 1 Madd. Rep. 153; Sug. Vend. 249, 5th ed.

In the case of *Ker* v. *Clobery*, 26th March, 1814, Sug. Vend. 251, 5th ed., where the estate was sold before the Master, and the particulars stated, that "the whole of the above lands are only subject to a modus for tithe-hay of 2*l. per annum*," Lord *Eldon* was of opinion, that a purchaser of an estate, stated to be tithe free, or subject to a modus, could not be compelled to take it with a compensation, if the estate is not tithe free.

Errors in description to avoid agreement.

But if it be the purchaser's object to acquire the whole of the estate; or a legal instead of a reputed manor, (for the distinction as to which see the note, under APPOINTMENT OF GAMEKEEPERS, *post*, Vol. 2, pp. 372, 375); or to acquire a freehold estate;—or an estate situate in a particular place,—it may be proper to add,

"BUT NEVERTHELESS *it is hereby declared and agreed*, that if the said [*vendor*] should not be able to make a good title to the whole of the said premises, or the same should not contain —— acres; or in case the said manor should prove to be a manor by reputation only; or in case the said premises should prove not to be of freehold tenure; or in case the said premises should prove not to be situate in the said parish of ——; Then the said [*purchaser*] shall be at liberty wholly to vacate this agreement."

AGREEMENT *for the Sale of a* COPYHOLD *of Inheritance.*

SALE OF COPYHOLD OF INHERITANCE.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—; BETWEEN [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part; Parties.

WITNESS, that the said [*vendor*] hath contracted and agreed to sell to the said [*purchaser*] the inheritance in possession, according to the custom of the manor of ——, in the said county of ——, of and in ALL THOSE customary or copyhold pieces or parcels of land, situate in the said manor, and now in the occupation of ——, and containing in the whole by estimation —— acres, be the same more or less, AT or for the price or sum of —— pounds; AND that the said [*vendor*] shall and will within the space of (*one*) month from the date hereof, at his own expense, cause and procure to be made and delivered to the said [*purchaser*], his agent or attorney, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*vendor*] thereto: AND that he the said [*vendor*] and all other persons having any estate therein, shall, on or before the —— day of —— next ensuing, in case the counsel of the said [*purchaser*] should be of opinion that the said [*vendor*] has a good title to the inheritance in possession in fee-simple of the said premises, according to the custom of the said manor, duly surrender the same, according to the custom of the said manor, to the use of the said [*purchaser*], his heirs and assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents, heriots, and services therefore due, and of right accustomed, but free from all other incumbrances whatsoever (*a*): AND that the

Vendor contracts to sell.

Parcels.

Price.

Vendor to make and deliver abstract.

To surrender.

To execute covenants for title, &c.

(*a*) The *free bench* of a widow, in case her husband die before he per-

SALE OF COPYHOLD OF INHERITANCE.

said [*vendor*] and all other persons interested in the said premises, shall, on or before the said —— day of ——, execute the usual deed of covenants, on the sale of copyhold estates of inheritance, for the title, for quiet enjoyment, and for further assurance; (*b*) AND *it is hereby agreed*, that on such surrender being made, and such deed of covenants being executed, as aforesaid, the said [*purchaser*] shall pay to the said [*vendor*] the said sum of [*purchase-money*]: AND that the said [*vendor*] shall deliver the possession of all the said premises to the said [*purchaser*] on the said —— day of —— next: AND that the said [*vendor*] shall not in the mean time cut down any trees, or commit any other waste upon the said premises, or grant any new leases thereof, without the privity and consent of the said [*purchaser*]. AND *it is further agreed* that each of the said parties shall pay the fees and charges of his own counsel and solicitor, attending the examination of the said title; *And also* that the said [*purchaser*] shall pay the expenses of the said surrender, and all fees and fines upon the surrender to and admission of the said [*purchaser*] to the said premises (*c*), and that the said deed of

Purchaser to pay consideration money on surrender being made and covenants for title, &c. executed.

Possession to be delivered on a certain day.

Vendor not to fell trees, &c.

Each party to pay his own counsel and solicitor.

Purchaser to pay for surrender and his own admission, and deed of covenants.

Where the husband can by surrender bar his widow's freebench, his contract for a valuable consideration will bind her in equity.

fects a surrender, would be defeated in equity by his agreement for sale; because, where a husband can by his surrender bar his wife of her free bench, any act done *for a valuable consideration* will be binding on her; and she is in that case compellable in equity to surrender her legal interest pursuant to such contract. *Hinton* v. *Hinton*, 2 Ves. Sen. 631, 638; Ambl. 277; *Brown* v. *Raindle*, 3 Ves. 256.

Incumbrances.

(*b*) If the premises are subject to any incumbrances, *vide ante*, 83, 86.

Vendor must pay for his own admission;

but the purchaser must pay for the surrender, and his own admission.

(*c*) In the absence of any stipulation, if the vendor has not been previously admitted, the costs and charges in procuring his admission, in order to enable him to make a surrender to the purchaser, must be borne by the vendor; but the costs and charges of the surrender to be made by the vendor to the purchaser, and of the purchaser's admission, must be borne by the purchaser. *Drury* v. *Man*, 1 Atk. 96, Sanders's ed. So a covenant to surrender a copyhold to a purchaser, and to make and do all acts, deeds, &c. for the perfect surrendering and assuring the premises at the costs and charges of the vendor, is not broken by non-payment of the fine to the lord, on the admission of the purchaser; for the title is perfected by the admittance of the tenant, and the fine is not due till after

Fine is not due till after admission.

covenants shall be prepared by and at the expense of the said [*purchaser*]; (*d*) AND for the due performance of the several agreements herein contained, on their respective parts, each of them the said parties bindeth himself, his heirs, executors, and administrators, unto the other of them, his executors, administrators, and assigns, in the sum of —— pounds, by way of liquidated damages for the non-performance of such agreements, and not by way of penalty. IN WITNESS, &c. (*e*).

SALE OF COPYHOLD OF INHERITANCE.

Liquidated damages.

Testimonium.

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the admittance; *Graham* v. *Sime*, 1 East, 632; for the admittance is the cause of the fine, and if after admittance the tenant refuses to pay the fine, it is a forfeiture. *Hobart* v. *Hammond*, 4 Co. 28 a. *Fish* v. *Rogers*, 1 Roll. Abr. 506, (A) pl. 1, 507, (D) pl. 2; 6 Vin. Abr. 109, (A) pl. 1, 133, (P. c.) pl. 1; *Rex* v. The Lord of the Manor of *Hendon*, 2 Term Rep. 484; 1 Bac. Abr. 735, Gwil. ed. *Copyhold*, (I) 2; 1 Watk. Cop. 263, 286. The 48 Geo. III., c. 149, s. 34, authorizes a steward of a manor, "previously to the acceptance of any surrender, or the granting or making of any admittance, voluntary grant, or license to demise in court, to demand and insist on the payment of his lawful fees for the same, and for the copy of court roll to be made out thereof, together with the stamp duty payable on such copy of court roll." But this clause does not extend to the fine, as it has been erroneously conceived.

Steward may, previously to surrender, &c., demand his fees, and the stamp duty.

(*d*) "*but* the expenses of and attending any customary recovery, which may be requisite, shall be paid and borne by the said [*vendor*]."

Customary recovery to be at vendor's expense.

[(*e*) It was doubted by Lord *Redesdale*, whether a contract signed by one party alone could be enforced against him, there being no mutuality between the parties, 1 Sch. & Lef. 20; but the notion is inconsistent with a stream of authorities, (see cases cit. Sugd. Vend. 7th ed. 75), which have established that it is enough that the contract is signed by the party to be charged, such being the terms of the statute of frauds. Both Sir *W. Grant*, (*Western* v. *Russell*, 3 Ves. & Bea. 187), and Sir *T. Plumer*, (*Martin* v. *Mitchell*, 2 Jac. & Walk. 427), have expressed their non-concurrence in Lord *Redesdale's* opinion. The answer given to the objection of the want of mutuality is, that the party seeking to enforce the performance of the contract, has, by filing the bill, bound himself. It should seem, that, until some act has been done by the party who has not signed, to render the contract binding on him, it is open to the other party to retract; for there can be no contract, properly speaking, without a reciprocity of obligation. See 2 Jac. & Walk. 428. At all events, if he should refuse to sign, upon being required so to do, it is probable that the Court would not allow him afterwards to compel performance.]

TO GRANT WIFE ANNUITY FOR JOINING IN A CONVEYANCE OF COPYHOLDS, IN WHICH SHE HAS AN ESTATE FOR LIFE.

AGREEMENT *to charge an Annuity upon Lands, in consideration of Wife joining in a Sale of* COPYHOLD LANDS *settled on her for Life.*

Parties.

AN AGREEMENT made the —— day of ——, 18—, BETWEEN [*vendor*], of &c., and [——] his wife, of the one part; and [*trustee*], of &c., of the other part.

Recital of settlement of copyhold on wife for life, in remainder.

WHEREAS the copyhold or customary lands of the said [*vendor*], situate and being at —— in the county of ——, stand settled and assured, unto or in trust for the said [*wife*] for her life, to take effect upon his decease. AND WHEREAS the said [*vendor*] is desirous of selling and disposing of the said copyhold or customary lands; *and* hath actually entered into a contract for the sale thereof to [*purchaser*], of &c., at or for the price or sum of —— pounds; *and* for the purpose of enabling the said [*vendor*] to complete the said contract, the said [*wife*] hath agreed to join with her said husband in the sale and conveyance of the same copyhold lands to the said [*purchaser*], upon condition that he the said [*vendor*] shall and do, in lieu thereof, settle and secure unto, upon, or in trust for her the said [*wife*], for her life, to commence from his decease, the yearly sum of —— pounds, to be issuing out of his lands and real estates, at ——, in the county of ——.

Recital that husband had contracted to sell settled estate, and that his wife had agreed to join, in consideration of husband agreeing to settle an annuity on her out of other property.

Covenant to charge an estate with annuity for wife after husband's death, in case she joins in conveyance of copyholds.

NOW BE IT KNOWN, that the said [*vendor*] doth for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*trustee*], (a trustee nominated by and on behalf of the said [*wife*],) his executors and administrators, that if the said [*wife*] do and shall join in the sale and conveyance of the said copyhold or customary premises to the said [*purchaser*], then and in such case he the said [*vendor*], or his heirs, shall and will, at his and their own costs and charges in all things,

within (*twenty days*) next after the making and executing such sale and conveyance, by such ways and means as the counsel of the said [*trustee*], his executors or administrators, shall advise, grant, limit, settle, and appoint, unto or in trust for the said [*wife*], an annuity or yearly sum of —— pounds, free from all taxes, charges, and deductions whatsoever, to be charged and chargeable upon, and issuing and payable out of, all the lands and real estates of him the said [*vendor*], situate and being in —— aforesaid, to commence and be computed from the day of the death of the said [*vendor*], and to continue payable to her during the term of her natural life, in lieu and stead of her estate for life in the said copyhold or customary estate, and in compensation for the same. IN WITNESS, &c.

TO GRANT WIFE ANNUITY FOR JOINING IN A CONVEYANCE OF COPYHOLDS, IN WHICH SHE HAS AN ESTATE FOR LIFE.

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AGREEMENT *for the Purchase of a* REMAINDER *or* REVERSION (*a*) *in Fee, expectant on an Estate for Life.*

FOR PURCHASE OF REVERSION.

ARTICLES OF AGREEMENT made and entered into the —— day of —— 18—; BETWEEN [*vendor*], of &c., of the one part, and [*purchaser*], of &c. of the other part.

Parties.

THE said [*vendor*] doth hereby agree with the said [*purchaser*], to sell to him the remainder or reversion in

Vendor agrees to sell.

(*a*) Sales of *reversionary* interests are almost rendered impracticable, from an understanding, that dispositions of them by private contract will in general be set aside for the least inadequacy of price, and that proof of the full value lies upon the purchaser, *i. e.* he must prove that fact, without the vendor being required to shew the contrary. This however, as Mr. Roper observes, seems to be a mistake; for all, or the great majority of the cases, merely establish this doctrine in instances of *expectant* heirs, or of persons who may be considered to be adopted as such, from their relation to the family. 9 Ves. 246; 16 Ves. 512; 17 Ves. 20; 3 Ves. & Bea. 117. But see *post*, Vol. 3, p. 206.

The supposed rule, that expectant heirs, and persons standing in that relation, cannot dispose of their reversionary interests, unless the purchaser proves that he has given the full value, considered, and its inconvenience shewn.

The principle is public policy, in order to prevent deception upon pa-

FOR PURCHASE OF REVERSION.

fee of him the said [*vendor*], expectant upon, and to take effect in possession immediately after the determination of

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rents and ancestors,—no parties to the transactions, and who, in ignorance of them, are induced to leave their properties to be divided among usurers and common adventurers, instead of their heirs, whom they intended to be beneficial inheritors and successors to their fortunes. But this exception of expectant heirs out of ordinary cases appears to have been opposed by some learned judges; and it will be found, upon examining the authorities prior to *Peacock* and *Evans*, after referred to, that, whatever might have been the *dicta* of judges, the cases were decided, not upon inadequacy of value only, but upon gross frauds and impositions, which ought, and would have set aside any contracts. *Nott* v. *Hill*, and *Bill* v. *Price*, 1 Vern. 167, 467; *Barney* v. *Tyson*, 2 Ventr. 359; *Ardglasse* v. *Muschamp*, 1 Vern. 237; *Lamplugh* v. *Smith*, 2 Vern. 77; *Berny* v. *Pitt*, 2 Vern. 14, 2 Ch. Ca. 136, *S. C.*; and *Twisleton* v. *Griffith*, 1 P. Wms. 310.

In *Curwin* v. *Miller*, 3 P. Wms. 292, n. Lord *King* relieved the heir. That case is very shortly reported, and may have omitted to state many particulars. In *Chesterfield* v. *Jansson*, 1 Atk. 301, which was decided
[*152] *upon the subsequent confirmation of the original transaction, Justice *Burnet* said, it might be too rigid to say that an heir should not borrow upon an expectancy, as some persons are so niggardly and sparing to their children, that a poor heir might starve in the *Desert*, with the land of *Canaan* in his view, if he could not relieve himself by borrowing upon an expectancy. But modern authorities, *Evans* v. *Chesshire*, Belt's Supp. to Ves. Sen. 300; 1 Madd. Ch. 122, (*h*), 2d ed.; *Peacock* and *Evans*, 16 Ves. 512; *Gowland* v. *De Faria*, 17 Ves. 20; *Bowes* v. *Heapes*, 3 Ves. & Bea. 117, have established, that although an expectant heir may mortgage or sell his expectancy, yet, if the full value be not obtained, the transaction shall be void. The consequence of this rule is, to exclude the fair and honest purchaser, who will not run such a risk, and to admit the usurer and rapacious money lender, who will incur it, but only upon the most exorbitant terms; so that the severity and *uncertainty* of the rule defeats its own end. See Montesquieu's Spirit of Laws, Bk. 22, ch. 19. Probably, the more effectual principle would have been, to have established the contract of the heir in all cases where it would have been binding upon other persons, and to have relieved him when, and when only, *undue* advantage had been taken of his necessities, and a gross unconscionable bargain had been made with him. In *Hill* v. *Caillovel*, 1 Ves. Sen. 122, which was the case of a son, aged twenty-four, who gave his bond for the payment of 520*l.* within six months after the death of his father, then of the age of seventy, Lord *Hardwicke* observed, that the circumstances were *suspicious;* but intimated, that he could not relieve against

the estate for life of [*tenant for life*], of &c., of and in ALL THOSE messuages or tenements and premises, situate at

FOR PURCHASE OF REVERSION.
Parcels.

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the transaction, *without proof* of *imposition*. Great inconvenience in practice, and much litigation, have arisen from the law being established as above: and it is considered impossible to recommend a purchaser to accept a title that depends upon so uncertain a calculation as the price being the full value of the reversion, which is left to the opinion of a Judge in each particular case, and upon which it may frequently happen that any two or more persons may disagree. So that, at present, *Burnet's* observation is realized, that the expectant heir must either starve in the sight of *Canaan*, or fall into the hands of rapacious money lenders, or have recourse to a sale by public auction, although not so productive as a *bonâ fide* sale by private contract. The inconvenience felt in this instance, from the uncertainty of the law, as applicable to each case, shows the propriety of all the rules of law being made clear, and followed in all cases to which they apply, until an alteration be made with the concurrence of all, or the majority, of the proper Judges. Experience has proved the truth of the proposition, that *misera servitus est ubi lex est vaga;* and it has been ascertained by the same unerring test, *that there is less inconvenience in acting upon an unsatisfactory principle, which has acquired the force of law by decisions, than when the private opinion or views of a single judge have induced him to set at nought the determinations of his predecessors, and the opinions of his contemporaries, and to decide against them.

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It is presumed, that the cases do not extend to instances where the persons entitled to remainders or reversions are not the expectant heirs; or, from their relation to the family, are not to be considered in the same character.

The above rule is confined to the case of expectant heirs, and persons standing in that relation.

Thus, in the case of *Gwynne* v. *Heaton*, 1 Bro. C. C. 6, Lord *Thurlow* said, that "a remainder-man might sell or give away his remainder, and the Court will not take it away from the purchaser or donee; that an inadequate consideration is *not alone* sufficient to vitiate the contract; although, in order to do so, it must be inadequate. Where it is sold for a sum *grossly* inadequate, the Court has never suffered it to stand."

In *Batty* v. *Lloyd*, 1 Vern. 141, the defendant agreed with the plaintiff, entitled to an estate after the death of two old women, to give to her 350*l.* in consideration of being paid 700*l.* at the deaths of these two old women; and the plaintiff was to secure the 700*l.* upon a mortgage of her *reversionary* estate. The women died two years afterwards, and the suit was instituted to be relieved against the bargain; but the Court refused to interfere, observing that nothing ill appeared in the transaction.

And in *Cole* v. *Gibbons*, 3 P. Wms. 294, Lord *Talbot* took the distinction between young heirs and other persons.

FOR PURCHASE OF REVERSION. —— in the county of ——, and now in the occupation of ——, and containing &c., with their appurtenances, free

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Result of the cases.

The conclusion to be drawn from the old and new cases seems to be this: that the heir may sell or incumber his reversionary or expectant property by private contract, if the sale be for the full value, or if the incumbrance be made upon fair terms.

And probably it may be considered, that a stranger may sell his remainder or reversion for the best price which he can get, although it may be at an undervalue, if there be no fraud or imposition. The word "probably" is used in consequence of the general impression, that the reversionary interests of no persons can be sold by private contract, except at their utmost value. There are indeed numerous *dicta* in support of that impression, but no case has been found distinctly determined to that effect. The instance of an expectant heir was the first exception to a person's power of free disposition of his property upon the principle before stated. That principle was next extended to the more immediate members of the family, under the *supposition, as it is conceived, of the reversionary interest being intended as a portion or provision, and therefore within the principle of the expectant heir. Thus far the cases have advanced, and, it is conceived, no farther. When, therefore, the inconvenience of the exception which has been established is considered, and its insufficiency to answer the end of its formation, and the general sentiment in disfavour of it, it may not be considered as too speculative or rash to suppose, that when the question comes fairly before the Court, upon the validity of the sale of a reversionary interest belonging to a stranger, the contract will not be vitiated from mere inadequacy of consideration alone, and which would not avoid it in general instances. It appears above, that there is no want of authority for such a determination: the *dictum* of Lord *Thurlow*, and the decrees of Lord *Hardwicke* and Lord Keeper *North*, may be considered a sufficient foundation upon which to found such a decree. 1 Rop. *Husband and Wife*, 227; to which valuable work the reader is indebted for the above observations.

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[In the late case of *Headen* v. *Bosher*, 1 M'Clel. & Younge, 89, Lord C. B. *Alexander* refused to set aside the purchase by private contract of a reversionary interest in money and stock, expectant on the decease of a lady, on the ground of alleged inadequacy of price; the price given being rather more than two-thirds of the value as computed by Mr. *Morgan*. The parties were strangers to each other, and no undue influence had been used. The learned Chief Baron expressed his dissent from the doctrine laid down by Sir *Wm. Grant*, in *Gowland* v. *De Faria*, 17 Ves. 20, stated *post*, Vol. 3, p. 215, that it is incumbent upon the purchaser of a reversion to shew that he has given an adequate consideration.]

Boná fide sales

Boná fide sales by expectant *heirs* of their reversionary interests, by

from all incumbrances, at or for the price or sum of —— pounds: *and* that he the said [*vendor*] shall within (*one*) FOR PURCHASE OF REVERSION.

public auction, are not avoidable, unless there be some fraud in the transaction. Thus, in the case of *Shelly* v. *Nash*, 3 Madd. Rep. 232, the material facts of which, as they appeared on the pleadings, were, that the defendants, in consequence of an advertisement in the public papers of a sale, 4th March, 1814, by public auction, at *Garraway's*, of a reversion of 8,000*l.* secured on freehold property, attended the sale, at which time printed particulars were distributed as follows: "The reversion of 8,000*l.* sterling, to be most amply secured upon valuable freehold property, and made payable at the decease of the survivor of two gentlemen; one (the grandfather of the plaintiff) between eighty and ninety, and the other, the father of the plaintiff, upwards of sixty years of age, in case they are both survived by a gentleman in his twenty-second year." The defendants were declared the highest bidders, at the sum of 2,593*l.* 10*s.* and paid a deposit of 519*l* and signed an agreement for the purchase. The defendants, previously to the purchase, had no knowledge of the plaintiff, or his circumstances, nor even knew the name of the vendor, until they applied for an abstract of the title to the reversion on which the money was to be secured. On the 6th July, 1814, the purchase money was paid, and the securities executed. The grandfather of the plaintiff died 6th January, 1815.

of reversionary interests by public auction, are binding; and the purchaser is not bound to shew he has given the full value.

The evidence of *Morgan*, the actuary of the Equitable Assurance Office, stated, that 3,540*l.* or thereabouts, was the fair value of the reversionary interest of 8,000*l.* on the before mentioned contingency; and that only 5,860*l.* ought to have been secured, to be paid upon the *happening of the [*155] contingency, in consideration of the sum of 2,593*l.* 10*s.*

Frend, the actuary of the Rock Life Insurance Office, by his evidence, stated, that 3,653*l.* was the fair price of the contingency; but that no one at the time (July, 1814) would have advanced money on such conditions, as it was well known that a common mode of borrowing money was by securing to the lender 10*l. per cent.* on the money advanced, and an assurance on a life or lives, by which the capital was secured ultimately to the lender; and that in this way much money was advanced: but since the great change in the value of money, several such contracts have been dissolved, by the borrower procuring money at 7*l. per cent.* and an assurance on a life or lives. That had any person applied to him on the 12th July, 1814, to know what, upon the then mode of lending money, he should advance for 8,000*l.* to be received upon the aforesaid contingency, he should have answered, 2,561*l.* 10*s.* And if he (the deponent) had been further asked, what sum might be expected for the advance of 2,593*l.* 10*s.* at that time, he should have replied, 8,099*l.* But on the propriety of said last-men-

FOR PURCHASE OF REVERSION.
To make and deliver abstract.

month from the date hereof, at his own expense, make and deliver to the said [*purchaser*], his agent or solicitor, an

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tioned terms, deponent does not presume to decide; but says, that *in contracts of the like nature, the contingency of a law-suit must be taken into consideration.*

The object of the bill was to get the plaintiff released from the grant, on payment of the principal money advanced, and interest at *5l. per cent.*, it being a sale for an inadequate consideration of a reversion by an expectant heir, only twenty-two years of age, and in distress.

Sir *J. Leach's* judgment in *Shelly* v. *Nash.*

Sir *John Leach*, V. C.—"This is an important question; it has often occupied my attention; and so fixed are my sentiments on the subject, that it is unnecessary to delay the expression of my opinion. At law, and in equity also, generally speaking, a man who has a power of disposition of his property, whether he sells to relieve his necessities or to provide for the convenience of his family, cannot avoid his contract upon the mere ground of inadequacy of price. A Court of equity, however, will relieve expectant heirs and reversioners from disadvantageous bargains. In the earlier cases it was held necessary to shew that undue advantage was actually taken of the situation of such persons; but in more modern times it has been considered, not only that those who were dealing for their expectations, but those who were dealing for vested reversions also, were so exposed to imposition and hard terms, and so much in the power of those with whom they contracted, that it was a fit rule of policy, to impose upon all who dealt [*156] *with expectant heirs and reversioners, the *onus* of proving that they had paid a fair price, and otherwise to undo their bargains, and compel a re-conveyance of the property purchased. The principle and the policy of the rule may be both equally questionable. Sellers of reversions are not necessarily in the power of those with whom they contract, and are not necessarily exposed to imposition and hard terms; and persons who sell their expectations and reversions from the pressure of distress, are thrown by the rule into the hands of those who are likely to take advantage of their situation; for no person can securely deal with them. The principle of the rule, however, cannot be applied to sales of reversions by *auction*. There being no treaty between vendor and purchaser, there can be no opportunity for fraud or imposition on the part of the purchaser. The vendor is in no sense in the power of the purchaser. The sale by auction is evidence of the market price. Being of this opinion, it is unnecessary for me to enter into a consideration of the evidence, as to the inadequacy or adequacy of the price. It is said, that pretended sales by auction may be used to cover private bargains: where such cases occur they will operate nothing."—BILL DISMISSED WITH COSTS.

abstract of the title of him the said [*vendor*], to the said messuages or tenements and premises: *and also* that the said [*vendor*], or his heirs, and all other necessary parties, shall and will, on or before the —— day of —— next, on receiving from the said [*purchaser*], his executors or administrators, the said sum of —— pounds, at the costs and charges of the said [*purchaser*], his heirs, executors, administrators, or assigns, execute a proper conveyance for conveying and assuring the said remainder or reversion in fee, expectant upon the determination of the estate for

FOR PURCHASE OF REVERSION.

All necessary parties to execute conveyance.

[But the principle of the last case was held not to apply, where *post obit* bonds were put up to sale by auction, *without reserve*. *Fox* v. *Wright*, 6 Madd. 111].

Where the contract is set aside, the defendant must be repaid the money advanced, and in some cases interest has been given.

Wherever, in these cases, the bargain is set aside, though for fraud, the defendant must be paid what was really lent to the plaintiff alone, and for his own proper use; and in some cases *interest* has been given, as in *Waller* v. *Dale*, Rep. Temp. Finch, 295, *S. C.* by the name of *Waller* v. *Dalt*, 1 Chan. Ca. 276; *Berny* v. *Pitt*, 3 P. Wms. 294, [D]; in others it has not, as in *Bill* v. *Price*, 1 Vern. 476; *Lamplugh* v. *Smith*, *Whitley* v. *Price*, 2 Vern. 77, 78; *Fairfax* v. *Trigg*, Rep. Temp. Finch, 314.

Effect of confirmation of sale by vendor.

But if the vendor, with full notice of all the circumstances, and of his right to set aside the contract, confirm the sale after the event has happened, or he becomes entitled in possession, equity will not relieve against the sale, although the aid of the Court could not originally have been withheld. *Cole* v. *Gibbons*, 3 P. Wms. 290; *Chesterfield* v. *Janssen*, 1 Atk. 301; *Hylton* v. *Hylton*, 2 Ves. Sen. 549; *Stephens* v. *Bateman*, 1 Bro. C. C. 22; *Crowe* v. *Ballard*, 3 Bro. C. C. 117; 1 Ves. Jun. 215; 2 Cox, 253; *Morse* v. *Royal*, 12 Ves. 355; *Murray* v. *Palmer*, 2 Scho. & Lef. 486; *Roche* v. *O'Brian*, 1 Ball & Bea. 339; *Dunbar* v. *Tredennick*, 2 Ball & Bea. 317. [As to the effect of acquiescence for a long time, upon the right to impeach the sale of a reversion, see *Whalley* v. *Whalley*, 1 Mer. 436; *S. C.* in Dom. Proc 3 Bligh, 1; see also 17 Ves. 25.]

Principle does not apply where reversioner joins tenant for life in a sale.

It should be observed, that the principle on which Courts of equity proceed, does not extend to those cases in which the remainder-man joins in the sale with those who have estates in possession. *Wood* v. *Abry*, Vice Ch. Mich. Term, 1818, cited 1 Fonbl. Treat. Equity, 135, (*k*), 5th ed. See further, on the subject of this note, 13 Vin. Abr. 546. *Fraud* (D. a.) 1 Equ. Ca. Abr. 90; (G) Gilb. Ch. 291, ed. 1758; 3 Wooddeson's Vinerian Lectures, 460; 2 Pow. Contr. 181; 1 Madd. Ch. 117, 2d ed.; 1 Fonbl. Treat. Equity, 135, 5th ed. Bk. 1, ch. 2, s. 12, (*k*); Sug. Vend. 229, 5th ed.

FOR PURCHASE OF REVERSION.

life of the said [*tenant for life*], of and in all the said messuages or tenements, and premises, with their appurtenances, unto the said [*purchaser*], his heirs and assigns, or otherwise as he or they shall direct, free from all incumbrances; AND THE SAID [*purchaser*] hereby agrees with the said [*vendor*], that he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will, on the execution of such conveyance as aforesaid, pay the said sum of —— pounds unto the said [*vendor*], his ex*ecutors or administrators. AND *it is further agreed*, by and between the said parties, that the said conveyance shall be prepared by and at the expense of the said [*purchaser*]; *and* that the same shall be settled and approved, on the parts of the said [*vendor*] and [*purchaser*], by their respective counsel or solicitors; *and* that each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor; *and* that if the said conveyance and assurance should not be executed before the said —— day of ——, then this agreement shall be wholly void to all intents and purposes whatsoever, and the jurisdiction of equity wholly barred(*a*); it being the true intent and

Purchaser agrees to pay consideration money.

[*158]

Conveyance to be at purchaser's expense;

but to be settled by parties' respective counsel.

Each party to pay his own counsel and solicitor.

Time, the essence of the contract.

Time, the essence of the contract in sales of reversionary interests.

(*a*) A similar provision to the above should never be omitted, unless the agreement of the parties be otherwise; although, in the absence of any express stipulation, if on an agreement for the sale of a reversionary estate, part of the terms is, that the purchase money shall be paid by a certain time, and it be not so paid, by default of the purchaser, the vendor is discharged from his contract; because it is of the essence of justice that such a contract should be executed immediately, and without any delay; as no man sells a reversion who is not distressed for money; and it is ridiculous to talk of making him a compensation by giving him interest on the purchase money during the delay. *Newman* v. *Rogers*, 4 Bro. C. C. 393. So specific performance was refused on the laches and trifling conduct of the plaintiff, the contract being for a sale to the plaintiff under a bankruptcy of a reversionary interest for life, which, in the interval, fell into possession; and the defendants having also been in some degree remiss, the bill was dismissed without costs, upon delivering up the agreement. *Spurrier* v. *Hancock*, 4 Ves. 667. But if the purchaser of a reversion objects, on account of a want of title, and continues treating after the time is elapsed when a good title was to be made, and the purchase completed, and the title is afterwards made good, he will be held to a specific performance. *Britton* v. *Twining*, before Sir *J. Leach*, V.C., 30th June, 1818, 1 Madd. Ch. 417, 2nd ed.

meaning of the said parties, that in such event, execution of this agreement shall not be enforced by any Court of equity, notwithstanding any rule, if such rule there be, that time cannot be made the essence of a contract, or any other rule or maxim whatsoever; and that the death of the said [*tenant for life*] before the said —— day of —— *next, [*159] shall not in any wise affect this agreement (*b*). In witness, &c.

FOR PURCHASE OF REVERSION.

(*b*) Add clause for liquidated damages, if it be the agreement, *ut ante*, 148.

Liquidated damages.

AGREEMENT *for the Purchase of an Estate for the* Life *of the Vendor; or for the Life of another Person or Persons* (*a*).

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

ARTICLES OF AGREEMENT made and entered into, the —— day of ——, 18—, Between [*ven-*

Parties.

(*a*) The having issue is not an essential preliminary to the power of alienation in the case of an estate *pour autre vie*, limited to one and the heirs of his body, as it is in the case of a conditional fee at common law, Hargr. n. Co. Litt. 19 a, (4); from which the mode of barring by alienation was evidently borrowed. Hargr. n. Co. Litt. 20 a, (5); 2 Gwill. Bac. Abr. 543. Estates *pour autre vie*, not being entailable within the statute *de donis conditionalibus*, 13 Ed. I. c. 1, such persons as have interests in them in the nature of estates tail, may bar their issue and all remainders over, by *alienation* of the estate *pour autre vie*, in the same manner as those who are strictly speaking tenants in tail may do, by *fine* and *recovery*; such as a conveyance by the *quasi* tenant in tail, by lease and release; or surrender to the immediate remainder-man or reversioner, although it be only to renew the lease, and although the surrender be made without the concurrence of the trustees of the legal estate, or even by articles of agreement, either to sell or settle the estate. *Low* v. *Burron*, 3 P. Wms. 262.

A fine or recovery not necessary to bar a *quasi* entail of an estate *pour autre vie;*

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

dor], of &c., of the one part; and [*purchaser*], of &c., of the other part.

Agreement by vendor to sell premises.

To make and deliver abstract.

FIRST, the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, agree to sell to the said [*purchaser*] the (*b*) life estate of him the said [*vendor*], in ALL THAT messuage or tenement, and premises, with the appurtenances, situate &c., for the sum of —— pounds (*c*); *And also*, at his own costs, to make and deliver unto the said [*purchaser*], or his solicitor, a full, complete, and perfect abstract of the title to the freehold and inheritance of the said premises; *And* if the counsel of the

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2 Eq. Ca. Abr. 394, pl. 1. *Baker* v. *Bayley*, 2 Vern. 225. *Norton* v. *Frecker*, 1 Atk. 524. *Wasteneys* v. *Chappel*, 1 Bro. Par. Cas. 457. *Forster* v. *Forster*, 2 Atk. 259. *Grey* v. *Mannock*, 2 Eden, 339, cited 6 T. R. 292. *Blake* v. *Blake*, 3 P. Wms. 10, (1). 1 Cox, 266. *Moody* v. *Walters*, 16 Ves. 313. *Blake* v. *Luxton*, Coop. 178. *Mogg* v. *Mogg*, 1 Meriv. 690. But not by devise, according to the better opinion. *Saltern* v. *Saltern*, 2 Atk. 376. *Campbell* v. *Sandys*, 1 Sch. & Lef. 281. (The case of *Doe* ex dem. *Blake* v. *Luxton*, 6 T. R. 289, *contra*, is now over-ruled by *Dillon* v. *Dillon*, 1 Ball & Beatty, 95). Though, when a married woman has a freehold in an estate *pour autre vie*, either absolutely, or *quasi* in tail, a fine is necessary. Duke of *Grafton* v. *Hanmer*, 3 P. Wms. 266, note. Perk. s. 613. Hargr. n. Co. Litt. 121 a. 2 Bl. Com. 355. 5 Cru. Dig. 200. Wms. n. 2 Saund. 175, f. (3). Gilb. Uses, 40, 244. Ritso's Introduction to the Science of the Law, 204. Noy's Maxims, 69, 9th ed.

ESTATE FOR OTHER LIVES.

(*b*) If the estate be held for the lives of other persons, say,

Reference to freehold lease.

" the estate of him the said [*vendor*], for the lives of [*nominees*], granted and demised by indenture, bearing date on or about the —— day of ——, 18—, and made between [*lessor*], of &c., of the one part, and the said [*vendor*], (or [*lessee*] of &c.), of the other part; and afterwards perfected by livery of seisin, of and in ALL THAT, &c."

LEASEHOLD.

(*c*) If it be the agreement, instead of the succeeding clause, say,

Vendor not to produce title to the inheritance.

" *but* the said [*vendor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease from the said [*lessor*] to the said [*lessee*], (and a conveyance thereof from the said [*lessee*] to the said [*vendor*]);"

said [*purchaser*] should be of opinion (*d*), that the said [*vendor*] has a good title to an estate for his life in the said premises, then that he the said [*vendor*] and all other necessary parties shall, on or before the —— day of —— now next, by good and sufficient conveyances and assurances in the law, and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance, convey and assure unto the said [*purchaser*], his heirs and assigns, or as he or they shall direct, the *said [* 161] messuage or tenement, and premises, for the (*e*) life of the said [*vendor*], free from all incumbrances (*f*); *And*, at the same time, deliver unto the said [*purchaser*] all the title deeds and writings in the possession or power of the said [*vendor*], relating to the said premises (*g*). AND THE SAID

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

If title good, to make conveyance.

with usual covenants.

And deliver title deeds.

(*d*) *Vide ante*, 81, (*a*.)

(*e*) " for the lives of the said [*nominees*], and the (survivors and) survivor of them,"

ESTATE POUR AUTRE VIE.

(*f*) If held by lease, say,

LEASEHOLD.

" *But* subject to the rent, covenants, conditions, and agreements, reserved and contained in the said indenture of lease;"

Subject to rent and covenants.

(*g*) Although every person having a freehold interest, under a settlement, or will, has *primâ facie* a right to the custody of the title deeds, in order to defend the possession; yet Lord *Hardwicke* has said, it was the common practice for the Court of Chancery to direct the title deeds to be taken from the tenant for life, and deposited in Court, for the security of a remainderman, whose interest was expectant on a mere tenancy for life; but more especially if the first tenant for life were the heir at law, as he might destroy the deeds in order to better his estate. *Ivie* v. *Ivie*, 1 Atk. 431. *Smith* v. *Cooke*, 3 Atk. 382. *Saithby* v. *Stonehouse*, 2 Ves. Sen. 617. But on a motion that the deeds might be kept in Court for safe custody, Lord *Northington* refused the motion; observing that it was his opinion, that the tenant for life should have the possession of the deeds, except when brought into Court, under an order of Court for safe custody. *Webb* v. Lord *Lymington*, 1 Eden, 9. *Webb* v. *Webb*, 1 Dick, 298. 8 Ves. 322. See also Lord *Lempster* v. Lord *Pomfret*, Ambl. 154. And in *Hicks* v. *Hicks*, Dick. 650, it is laid down, that when the title deeds are in the hands of the tenant for life, the Court of Chancery will not take them from him; but when they are not in his hands, the Court will not order them to be delivered to him. In *Ford* v. *Paring*, 1 Ves. Jun. 78, it was said, that

The tenant of the immediate freehold under a settlement has generally a right to the title deeds.

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIF.

Agreement by purchaser to pay consideration money.

[*162]

Conveyance to be at purchaser's expense.

And each party to pay his own counsel and solicitor.

Rates, &c. to be paid by vendor, till possession delivered to purchaser.

[*purchaser*] hereby agrees for himself, his heirs, executors, and administrators, that he the said [*purchaser*] shall and will, on the execution of the said conveyance, pay *the sum of —— pounds, unto the said [*vendor*] (*h*). AND *it is hereby further agreed*, that the said conveyance shall be prepared by and at the expense of the said [*purchaser*]; AND that the same conveyance shall be settled and approved on the parts of the said [*vendor*], and [*purchaser*], by their respective counsel or solicitors; AND that each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor; AND that all (*i*) rates, taxes, and outgoings, payable for or in respect of the said premises, to the —— day of ——, shall be paid by the said [*vendor*], from which time the said [*purchaser*] shall be let into possession of the said premises: (*add clause, time to be*

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where the tenant for life was satisfied, and did not care about the deeds, but the remainder-man was not satisfied, the Court would take care of the deeds, and not leave them in the hands of third persons who have no right to them, to the prejudice of the remainder-man. And in *Duncombe* v. *Mayer*, 8 Ves. 320, Lord *Eldon* directed the title deeds of an estate to be delivered out of Court, upon the application of trustees and tenant for life, founded on the above-mentioned authority of Lord *Northington*. See also *Strode* v. *Blackburne*, 3 Ves. 225. *Bowles* v. *Stewart*, 1 Scho. & Lefr. 209. 1 Cru. Dig. 121, 2d ed.

But equity will oblige tenant for life to deliver deeds to the heir, he confirming the life estate; yet if there are any *mesne* remainders in tail, as long as there is a possibility of issue, the Court will not order them to be taken out of the hands of the tenant for life. *Joy* v. *Joy*, 2 Eq. Ca. Abr. 284, pl. 4.

So also where the plaintiff claims as heir at law to a person who made a jointure, and there is no appearance of any settlement, the Court will oblige a production of the deed; *Senhouse* v. *Earl*, 2 Ves. Sen. 450; but unless the plaintiff offer to confirm the jointure, the settlement may be pleaded in bar; *Chamberlain* v. *Knapp*, 1 Atk. 52; but the jointress must state the date of her jointure-deed, and whether executed at the time it bears date, and what premises are therein comprised; however, she is not obliged to discover upon the offer to confirm, but may wait till the confirmation be made. *Leech* v. *Trollop*, 2 Ves. Sen. 661. *Ford* v. *Peering*, 1 Ves. Jun. 76.

LEASEHOLD FOR LIVES.

(*h*) *Add clause to pay the rent and perform the covenants*, ut post, 167.

(*i*) " rent,"

the essence of the contract, ut ante, 158). AND that the death of the said (*j*) [*vendor*] before the said —— day of —— next, shall not in any wise affect this agreement (*k*). IN WITNESS, &c.

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

Death of vendor not to affect agreement.

(*j*) "[*nominees*], any or either of them, before &c.,"

ESTATE FOR OTHER LIVES.

(*k*) In *White* v. *Nutt*, 1 P. Wms. 61; 2 Eq. Ca. Abr. 687, pl. 3, the purchaser, by articles, reciting that he had an estate for two lives in a church lease, covenanted to convey his title to the premises by a certain day to the purchaser, as he or his counsel should advise; after the *articles, and *before the time appointed for the conveyance*, one of the lives dropped; and the question being upon whom the loss should fall?—It was decreed by Lord Keeper *Wright*,—that in regard here was no default in the vendor in making the conveyance, the loss of the life ought to be borne by the purchaser, in the same manner as if the reversioner had articled to sell the reversion expectant upon two lives, and one of them had died before the conveyance, the purchaser should there have had the benefit of it; and in each case, *in equity, the estate is as conveyed from the time of the articles*. But his Lordship seemed to think, that if *all* the lives had dropped before the execution of the conveyance, it might have been another consideration, for that the money was to be paid upon the conveyance, and no estate being left, there could be no conveyance. The reporter adds, *quære tamen* the reason of this distinction between the loss of part and of the whole, *et vide Cass* v. *Rudell*, 2 Vern. 280; but that case is misreported, see Raithby's edition of Vernon, and *Mortimer* v. *Capper*, 1 Bro. C. C. 157, n. However, his Lordship's doubt cannot be supported, as it is contrary to the principle of that part of his judgment in italics; and in a late case, where a contract was made for the purchase of some houses which were burned down before the conveyance, the loss was holden to fall upon the purchaser, although the houses were insured at the time of the agreement for sale, and the vendor permitted the insurance to expire, without giving notice to the purchaser; Lord *Eldon* being of opinion, that no solid objection could be founded on the mere effect of the accident; because, as the party by the contract became in equity the owner of the premises, they were his to all intents and purposes. *Paine* v. *Meller*, 6 Ves. 349. But where a similar accident happened to an estate sold before a Master, and the report had only been confirmed *nisi*, the loss was holden to fall on the vendor, because a purchase before the Master is not complete before confirmation of the report; and the circumstance that the sale had been delayed by the purchaser having opened the biddings, was not attended to. *Ex parte Minor*, 11 Ves. 559. See also *Pope* v. *Roots*, 7 Bro. Par. Ca. 184; *Poole* v. *Shergold*, 2 Bro. C. C. 118; *Revel* v. *Hussey*, 2 Ball & Bea.

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Purchaser owner in equity from the time of the contract; liable therefore to accidents by fire, &c.

FOR PURCHASE OF ESTATE FOR LIFE, OR POUR AUTRE VIE.

280; *Wyvill* v. The Bishop of *Exeter*, 1 Price, 295; *Harford* v. *Parrier*, 1 Madd. Rep. 532; *Akhurst* v. *Jackson*, 1 Swanst. 85; *Zagary* v. *Furnell*, 2 Camp. 240; Sug. Vend. 251, 7th ed.; 1 Madd. Ch. 367, 2d. ed.; 1 Fonbl. Treat. Equity, 133, 370, 5th ed.

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PURCHASE OF THE WHOLE, OR PART OF LEASEHOLD.

AGREEMENT *for the Purchase of the* WHOLE, *or* PART *only, of a* LEASEHOLD *Estate; with or without the* LICENSE *of the Lessor.*

ARTICLES OF AGREEMENT made this —— day of ——, 18—; BETWEEN [*vendor*], of &c., for himself, his heirs, executors, (*a*) and administrators, of the one part; and [*purchaser*], of &c., for himself, his heirs, executors, and administrators, of the other part.

Parties.

Vendor agrees to sell

FIRST, the said [*vendor*], in consideration of the sum of —— pounds, agrees to sell to the said [*purchaser*], ALL THAT messuage or tenement, garden, and premises, situate at ——, in the county of ——, (*b*) for the remainder of a term of —— years, (*c*) from the —— day of ——, 17—, granted by an indenture bearing date on or about the —— day of ——, 17—, and made between [*lessor*], of the one part, and [*lessee*], of the other part, SUBJECT to the (*d*) rent, covenants, and agreements therein reserved

Premises.

Reference to lease.

(*a*) The executors and administrators need not be named, *vide ante*, 42, (*b*).

PART ONLY.

(*b*) If part only of the premises are sold, add,

"being part of the premises held by the said [*vendor*],"

DETERMINABLE ON LIVES.

(*c*) If the lease be for years determinable on lives, say,

"for the remainder of a term of (*ninety-nine*) years, if [*nominees*], of &c., any or either of them, should so long live, granted, &c."

PART ONLY.

(*d*) If part only of the premises are sold, say,

Subject to apportioned rent,

"apportioned rent of —— pounds, and to the covenants and agreements therein reserved and contained, on the

and contained, on the part of the lessee to be paid and performed: AND ALSO shall and will, within one month from the date hereof, at his own costs, procure and deliver unto the said [*purchaser*], an abstract of (*e*) the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto), but not of any previous deeds or writings whatever. AND ALSO shall and will, on or before the —— day of —— next, on receiving the said purchase-money, with all other requisite and necessary parties, and such persons as shall be interested in the purchase-money (*f*), by a good and sufficient assign-

PURCHASE OF LEASEHOLD.

Vendor to deliver abstract;

to execute assignment;

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part of the lessee to be paid and performed, so far as the same relate to and concern the messuage or tenement, garden, and premises, hereby agreed to be sold."

and covenants for parts sold.

(*e*) If the agreement be that the vendor shall produce the lessor's title, say,

To produce lessor's title.

"of the title of the said [*lessor*], and also of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto);"

And if the agreement be for the purchase of an underlease, say,

UNDERLEASE.

"of the title of the original and all subsequent lessors, and also of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto)."

To produce original and subsequent lessor's title.

If the purchaser of a leasehold interest be not precluded by the contract, he should generally require the production of the lessor's title, [but see 1 Ryan & Moody, 417]; and if it be an underlease, the title of the original, and all underlessors: in the latter case, *each* lease should be carefully inspected by the solicitor for the purchaser, to ascertain whether there are any covenants, the breach of which would cause the assignee to be evicted by a superior landlord, without any default on the assignee's part. Noy's Maxims, 157, 9th ed.

Purchaser should require production of lessor's title.

The observations *ante*, 46, equally apply to the *purchase* of a leasehold interest.

(*f*) If the consent of the lessor be necessary, say,

Vendor to procure license to assign.

"and with the license and consent of the lessor, to be procured by and at the expense of the said [*vendor*], and"

On an agreement for assigning a lease, in which there is a condition restraining assignment without the landlord's consent, the vendor is bound to procure such consent; *Lloyd* v. *Crispe*, 5 Taunt. 249; and on an action for damages against the purchaser, for non-performance of the agree-

The vendor is bound to procure the lessor's consent, when necessary.

PURCHASE OF LEASEHOLD.

ment, or other assurance, and with the usual and other proper covenants, assign or otherwise assure the said

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ment, it is incumbent on the vendor of such a lease to prove that he has obtained the lessor's consent to the assignment. *Mason* v. *Corder*, 7 Taunt. 9; 2 Marsh. 332.

The purchaser of leasehold premises subject to a condition against alienation without license, is not bound, in the absence of any stipulation, to execute a defeazance reviving the condition, or to take a new lease, with such a condition.

There is a wide difference between the purchase of the residue of a term under a lease, which contains a condition against alienation without license, accompanied with a license for the assignment, and a new lease for the like term, containing a similar condition: for, according to *Dumpor's* case, 4 Co. 119, the condition not to alienate is, by the license, gone for ever†; and therefore a purchaser might well refuse to accept, in lieu of the residue of an old term, a new lease, subject to such a condition; an assignee, too, has a right to get rid of his responsibility, by assigning over, when he has not given a covenant or bond for payment of the rent and performance of the covenants; and therefore, the value of the residue of a term differs in that quality also from a new lease. *Mason* v. *Corder*, 7 Taunt. 12. This reasoning equally applies to an assignment with the lessor's consent, and the purchaser being thereupon required to execute a defeazance reviving the condition of the lease, and covenanting with the lessor to pay the rent, and perform the covenants reserved and contained in the lease, which is sometimes required, *ut post*, 168. See the form, with a note on this subject, *infra*, DEFEAZANCE, and the Form, 282, *post*.

Equity will not decree an underlease on an agreement to assign.

So equity will not decree an underlease on an agreement to assign, though it appear that the assignment cannot be made without a forfeiture; for the defendant, in agreeing to assign, might intend to discharge himself from covenants, to which he would continue liable by the underlease. *Anon.* E. T. 1790; 1 Fonbl. Treat. Equity, 223, (*v*), 5th ed. This case is but shortly stated, and it must have been rather an extraordinary lease, if it contained a restriction against assignment without license, and yet did not contain covenants for payment of the rent, &c. A similar case is not likely to occur; because, in every lease properly drawn, the lessee covenants for payment of the rent, and performance of the covenants; in which case, whether he assigns, or underlets, and even although the lessor should consent to assignment, or accept the assignee as tenant, yet the lessee and his representatives would continue liable, under the covenants in the lease, to the payment of the rent and performance of the covenants; and their only remedy would be against the assignee, under the covenant or bond for payment of the rent, &c. and for indemnity, usually required on an assignment, [or the implied

Lessee under the covenants, continues liable after assignment.

[† Vide the doctrine on this subject, *post*, Vol. 4, pp. 55, 326.]

messuage or tenement, garden, and premises, with the appurtenances, unto the said [*purchaser*], or as he shall appoint, for the residue of the said term, free from all incumbrances: AND ALSO shall and will pay and discharge all rent, taxes, rates, assessments, and other outgoings for the said premises, up to the said —— day of *—— next (*g*). AND THE SAID [*purchaser*] hereby agrees to pay the said purchase-money, upon or at the execution of the said conveyance: AND ALSO shall and will, in the conveyance to him, if required, covenant thenceforth to pay the (*h*) rent, and perform the covenants, re-

PURCHASE OF LEASEHOLD.

To pay rent, &c., to a given day.

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Purchaser agrees to pay consideration money.

And to pay the rent and perform the covenants.

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obligation raised by the law in the absence of such an express engagement. *Vide post*, Vol. 4, p. 311.]

(*g*) If part only of the premises are sold, say,

PART ONLY.

"AND ALSO, shall and will, in the assignment to the said [*purchaser*], covenant thenceforth to pay the remainder of the said rent, and observe the covenants and agreements reserved and contained on the part of the lessee to be paid and performed, so far as the same relate to, and concern, the premises retained by the said vendor, and indemnify the said [*purchaser*] therefrom. AND *it is hereby agreed*, that, in the said assignment, there shall be contained cross powers of distress on the premises sold or retained, for the recovery of such part of the said apportioned rent as either of the said parties shall pay, in consequence of the default of the other of them, and also for the costs and expenses attending the same†: AND FURTHER, that the said [*vendor*] shall, at his own costs, deliver unto the said [*purchaser*], true and attested copies of the said indenture of lease, (and all subsequent deeds, evidences, and writings, relating thereto): *and*, in the assignment to the said [*purchaser*], covenant in the usual manner to produce the same when required, and to deliver other copies thereof, from time to time, at the request, costs, and charges of the said [*purchaser*]."

Vendor to covenant to pay rent and perform covenants for part retained, and indemnify purchaser therefrom.

Assignment to contain cross powers of distress.

Vendor to deliver attested copies of lease, &c.

and to covenant for their production, and to let purchaser have other copies.

(*h*) If part only of the premises are sold, say,

PART ONLY.

"said apportioned rent of —— pounds, and observe

To pay appor-

† *Vide* Forms, *post*, Vol. 4, pp. 290, 280.

PURCHASE OF LEASEHOLD.

Assignment to be at purchaser's expense.

Purchaser to execute counterpart.

served and contained in the said indenture of lease, and indemnify the said [*vendor*] therefrom; which said conveyance is to be prepared by and at the costs of the said [*purchaser*]: (*i*) AND ALSO shall and will, if required, execute a counterpart of the said conveyance, or a deed of cove-

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tioned rent and perform covenants for parts sold.

the covenants and agreements reserved and contained on the part of the lessee to be paid and performed, so far as the same relate to, and concern, the messuage or tenement, garden, and premises, hereby agreed to be sold, and indemnify, &c." *as above.*

Purchaser to execute defeazance, reviving condition.

(*i*) If the consent of the lessor be necessary, and if be the agreement, say,

"AND ALSO shall and will, after such assignment, if required by the lessor, execute a defeazance, reviving the condition contained in the said lease †, and thereby covenant with the lessor, to pay the rent, and perform the covenants reserved and contained in the same lease, for the residue of the said term, and which deed shall be prepared by the solicitor of the lessor, at the costs and charges of the said [*purchaser*]:"

See note (*f*), *ante*, 165.

PART ONLY.

† If part only of the premises are sold, say,

Purchaser to execute defeazance reviving condition for the part sold.

"so far as concerns the messuage or tenement, garden, and premises, hereby agreed to be sold, and thereby covenant with the lessor, to pay the said apportioned rent of —— pounds, and to perform the covenants reserved and contained in the same lease, for the residue of the said term, so far as relates to the premises hereby agreed to be sold, and which deed, &c." *as above.*

But in such a case, it would perhaps be better for the vendor to take a new lease, for the residue of the term of the part retained, and for the purchaser also to take a new lease, for the residue of the term of the part sold, which would save the expense of the defeazance and shorten the assignment, and also prevent the necessity and inconvenience of cross powers of distress to the vendor and purchaser, for recovery of the apportioned rent, in case either of them should by the neglect of the other be distrained on, or otherwise obliged to pay it. [*Vide* Form, *post*, Vol. 2, p. 561].

nant, or a bond in a sufficient penalty, for payment and performance of the said rent and covenants, the same counterpart, covenant, or bond, being prepared by, and at the costs of the said [*vendor*]. (*k*) (*Add clauses, time to be the essence of the contract, and for liquidated damages, ut ante*, 158, 148). In witness, &c.

PURCHASE OF LEASEHOLD.

terpart, &c. at vendor's expense.

(*k*) If the fixtures, or any articles of furniture, &c. are to be taken at a valuation, see Form, *ante*, 138.

Fixtures, &c. to be taken at a valuation.

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AGREEMENT *for the Purchase of a* Leasehold *House, and the Utensils, and Good-will of a Business.*

PURCHASE OF LEASEHOLD HOUSE, UTENSILS AND GOODWILL OF BUSINESS.

ARTICLES OF AGREEMENT indented, made, and agreed on, the —— day of ——, 18—; Between [*vendor*], of &c., of the one part; and [*purchaser*], of &c., of the other part.

Parties.

Whereas, the said [*vendor*] hath for some time carried on and exercised the trade or business of a ——, at ——, in the county of ——, at a (*workshop* (or *manufactory*) there; and which (*workshop* (or *manufactory*), with the appurtenances, the said [*vendor*] is entitled to, for the remainder of a term of —— years therein, granted to him by indenture of lease, bearing date on or about the —— day of ——, 17—, and made between [*lessor*], of &c., of the one part, and the said [*vendor*], of the other part. And whereas the said [*vendor*] hath made considerable repairs and improvements in the said (*workshop* (or *manufactory*), and premises comprised in the said indenture of lease, and hath purchased divers implements, utensils, and fixtures, for the purpose of carrying on the said business of a ——. And whereas the said [*vendor*], being about to quit the said trade of a ——, the said [*purchaser*] hath contracted and agreed with him for the purchase of the

Recital that vendor carried on business.

Reference to lease.

Recital that vendor had made additions and improvements.

Recital of contract to sell premises, utensils, fixtures, and good-will of business.

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD WILL OF BUSINESS.

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said (*workshop* (or *manufactory*), with the appurtenances, for the remainder of the said term of —— years, by the said indenture of lease granted; *and also* of the implements, utensils, and fixtures (*a*) in and upon the said *premises, and used or employed in the said trade or business of ——, and of the good-will of the said [*vendor*] in the same business, on the terms and conditions following, that is to say; that he the said [*purchaser*] should, on the execution of the assignment and conveyance of the said (*workshop* (or *manufactory*) and premises, with the said implements, utensils, and fixtures, secure to the said [*vendor*], his executors, administrators, or assigns, the sum of —— thousand pounds, payable at the end of (*three*) years from the date of these presents; with interest for the same, payable at the expiration of each year, after the rate of five pounds for each hundred pounds by the year: The said principal sum of —— thousand pounds, and the interest thereof, to be secured by the joint and several bond of the said [*purchaser*], and some other person as his surety, to be approved of by the said [*vendor*], in the penal sum of —— thousand pounds; *And also* by (*three*) several promissory notes, to be given by the said [*purchaser*] to the said [*vendor*], at the expiration of the first (*two*) years of the said term of (*three*) years, for the payment of the said sum of —— thousand pounds, by (*three*) several payments, as follows, that is to say; one of the said promissory notes to be for the payment of the sum of —— thousand pounds and interest, at (*four*) months after the date thereof; one other of the same notes to be for the payment of the sum of —— thousand pounds and interest, at (*eight*) months from the date thereof; and the other of the same notes to be for the payment of the like sum of —— thousand pounds and interest, at (*twelve*) months from the date thereof; *And also* to pay the said [*vendor*], his executors, administrators, or assigns, interest for the said sum of —— thousand pounds, or so much thereof as should remain due, until the whole of the said sum of —— thousand pounds should be paid off and discharged; *And* that the said [*pur-*

Terms of the contract.

Utensils, &c. specified in schedule.

(*a*) *or* "particularly enumerated and described in the schedule hereunder written, or hereunto annexed."

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD-WILL OF BUSINESS.

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chaser] should (*b*) secure to be paid to the said [*vendor*], his executors, *administrators, or assigns, by the bond of him the said [*purchaser*], in a sufficient penalty, the yearly sum of —— pounds, for and during the term of (*three*) years from the date of these presents, as a consideration for the good-will of the said business; the said sum of —— pounds, to be paid to the said [*vendor*], his executors, administrators, or assigns, at the expiration of each year from the date hereof, but without any interest for the same. Now

Agreement to convey.

THESE PRESENTS WITNESS, and the said [*vendor*], in consideration of the sums to be paid to him, his executors, administrators, or assigns, by the said [*purchaser*], as hereinafter is mentioned, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*vendor*], his executors, or administrators, shall and will, on or before the —— day of —— next, at the proper costs and charges in the law of the said [*purchaser*], his executors, or administrators, well and effectually convey, assign, and assure, or cause or procure to be well and effectually conveyed, assigned, and assured, by all proper and necessary parties, and with all proper, usual, and necessary covenants, unto the said [*purchaser*], his executors, administrators, and assigns; THE said (*workshop* (or *manufactory*) at —— aforesaid, with the appurtenances thereunto belonging, for the residue then to come of the said term of —— years; *And also* all the implements, utensils, and fixtures,

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(*b*) If it be the agreement, say,

Variation where notes are to be given for good-will.

"upon the execution of the said assignment give unto the said [*vendor*], three several promissory notes for the payment of the sum of —— pounds, in manner and at the times following, that is to say; one of such notes for the payment of —— pounds, at the end of one year from the date hereof; another of such notes for the payment of —— pounds, at the end of two years from the date hereof; and the other of such notes for the payment of —— pounds, at the end of three years from the date hereof, as a consideration, &c." *as above.*

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD-WILL OF BUSINESS.

(*c*) in or upon the said *(workshop* (or *manufactory)*, or used or employed in the said trade or business of a ——, or in any wise relating thereto; *And* the full, whole, and absolute estate, right, title, interest, term and terms of years which shall be then to come and unexpired, property, possession, benefit, claim, and demand whatsoever, both at law and in equity, of him the said [*vendor*], of, in, to, or out of the same several premises, every or any part or parcel thereof: AND ALSO shall and will, from time to time, and at all times hereafter, recommend the said [*purchaser*], as a —— to all the late or present customers of him the said [*vendor*]; *and* use his utmost endeavours to procure them to deal and trade with the said [*purchaser*]: AND that he the said [*vendor*], shall not nor will, at any time within the space of (*seven*) years hence next ensuing, directly or indirectly, alone or in partnership with any person or persons whomsoever, trade or deal in the said trade or business of a - —, in ——, aforesaid, or within the space of —— miles thereof(*d*). AND THE SAID [*purchaser*] doth for him-

Covenant by vendor to recommend purchaser to his late customers;

and for seven years not to carry on the business at ——, or within —— miles.

Covenant by purchaser to

Utensils, &c. specified in schedule.

(*c*) *or*, "particularly enumerated and described in the schedule hereunder written, or hereunto annexed."

A bond, &c. not to use a trade any where in England is void; but a bond, &c. not to use a trade at a particular place, or with particular customers, is good.

(*d*) Though a bond, covenant, or promise, even on good consideration, not to use a trade *any where in England*, is void, as being too general a restraint of trade; yet if such bond, covenant, or promise, be not to use a trade *at a particular place*, it is good. *Prugnell* v. *Gosse*, Allen, 67; 1 Roll. Abr. 16, pl. 6; *Jelliet* v. *Broade*, Noy, 98. [See also *Horner* v. *Ashford*, 3 Bing. 322]. For the same reason it seems, that a bond, covenant, or promise, not to use a trade with *particular customers* by name, if founded on a good consideration, is also valid. *Hunlocke* v. *Blackstone*, 2 Saund. 156. All the cases on this subject, prior to *Mitchell* v. *Reynolds*, 1 P. Wms. 181, are noticed in that case. There, in debt on bond, the defendant prayed oyer of the condition, which recited, that whereas the defendant had assigned to the plaintiff a lease of a messuage and bakehouse in *L.*: in the parish of *St. A.* for the term of five years, if the defendant should not exercise the trade of a baker *within that parish* during the said term; or, in case he did, should, within three days after proof thereof made, pay to the plaintiff 50*l.*, *then* the obligation to be void: and pleaded that he was a baker by trade; that he had served an apprenticeship to it, by reason whereof the bond was void in law; wherefore he traded as he well might: and, on demurrer, the Court was of opinion, that a special

self, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*vendor*], his ex-

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD-WILL OF BUSINESS.

pay a sum for good will of business, by three yearly instalments.

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consideration being set forth in the condition, which shews it was reasonable for the parties to enter into it, the bond was good: and that the true distinction was not between *promises* and *bonds*, but between contracts *with* and *without* consideration; and that wherever a sufficient consideration appeared to make it a proper and a useful contract, and such as could not be set aside without injury to a fair contractor, it ought to be maintained; but with this constant diversity, viz. where the restraint is *general*, not to exercise a trade *throughout the kingdom*, and where it is limited to a *particular place*—that the former is void, being of no benefit to either party, and only oppressive; but the other is good. The principle of this case was afterwards recognised and adopted in *Chesman* v. *Nainby*, 2 Stra. 739; 2 Ld. Raym. 1456; 3 Bro. P. C. 349, *S. C.* So, where the condition of a bond was, that, in consideration *A.* would take *B.* as an assistant in his business as a surgeon, for so long a time as it should please *A.*, *B.* agreed not to practise on his own account for fourteen years within ten miles of the place where *A.* lived, the bond was held good. *Davis* v. *Mason*, 5 T. R. 118. See *Sloman* v. *Walter*, 1 Bro. C. C. 418. And where, by indenture between *A.* and *B* and *C.*, dissolving their partnership as rope-makers, *A.* and *B.* covenanted to allow *C.*, during his life, two shillings on every hundred weight of cordage which they should make, on the recommendation of *C.*, for any of his friends and connections, and whose debts should turn out to be good: and that *A.* and *B.* should stand the risk of such debts incurred; but *should not be compelled to furnish goods to any of C.'s connections whom they should be disinclined to trust;* and *C.* covenanted not to carry on the business of a rope-maker during his life (except on government contracts); and that all debts contracted, or to be contracted in his or their name, pursuant to the indenture, should be the exclusive property of *A.* and *B.;* and that *C.* should, during his life, exclusively employ *A.* and *B.*, and no other person, to make all the cordage ordered of him, by or for his friends and connections, on the terms aforesaid, and should not employ any other person to make any cordage on any pretence whatsoever: It was holden, that the covenant by *C.* to employ *A.* and *B.* exclusively to make cordage for his friends, and not to employ any other, *A.* and *B.* not being obliged to work for any other than such as they chose to trust, was not illegal and void, as being in restraint of trade without adequate consideration; for the whole indenture must be construed together according to the apparent reasonable intent of the parties; and the general object being only to appropriate to *A.* and *B.* so much of *C.'s* private trade as they chose to give his friends credit for, so much only was covenanted to be transferred: and *C.* was still at liberty to work for any of his friends, who

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD-WILL OF BUSINESS.

ecutors and administrators, by these presents, in manner following, that is to say; that he the said [*purchaser*], his heirs, executors, or administrators, shall and will pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, during the said term of (*three*) years, to be computed from the time aforesaid, the clear yearly sum of —— pounds, of lawful money of Great Britain, at the expiration of every year of the said term of (*three*) years, as a consideration for the good-will of the said premises as aforesaid: AND ALSO that he the said [*purchaser*], together with some other person, to be approved of by the said [*vendor*], shall and will give and execute unto the said [*vendor*], a bond in the penalty of —— thousand pounds, for the payment unto the said [*vendor*], his executors, administrators, or assigns, of the sum of —— thousand pounds, at the expiration of (*three*) years, to be computed as aforesaid, together with interest for the same sum of —— thousand pounds, after the rate of five pounds for one hundred pounds by the year; such interest to be paid at the expiration of every year of the said term of (*three*) years: AND ALSO that he the said [*purchaser*], his executors, or administrators, shall and will, at the expiration of (*two*) years, to be computed as aforesaid, make and deliver to the said [*purchaser*], his executors, or administrators, three several promissory notes in writing, under the hand or hands of the said [*purchaser*], his executors, or administrators, which said promissory notes shall all of them bear date on the day of the expiration of the said (*two*) years, and to be made for securing the payment to the said [*vendor*], of the several sums, and at the several times following, that is to

And to give bond, with surety, for payment of purchase money at end of three years, with interest thereon yearly.

And at the end of two years give promissory notes for payment of purchase money by three instalments.

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were refused to be trusted by *A.* and *B.*: by which construction the restraint on *C.* was only co-extensive, as in reason it could only be intend-tended to be, with the benefit to *A.* and *B.*; and therefore the restraint on *C.* could be no prejudice to public trade. *Gale* v. *Read*, 8 East, 80; 2 Saund. 156, n. See *Crutwell* v. *Lye*, 17 Ves. 335; 1 Fonbl. Treat. Eq. 265, 5th edit.; 1 Bac. Abr. 645, Gwill. edit. *Conditions*, (K); 1 Vin. Abr. 294, pl. 6; 20 Vin. Abr. 324, *Trade*, (F).

[There is clearly no objection to a person selling the good-will or secret of a business, and engaging not to use it. *Bryson* v. *Whitehead*, 1 Sim. & Stu. 74. As to the power of corporations to make bye-laws in restraint of trade, see *Chamberlain of London* v. *Compton*, 7 Dowl. & Ryl. 597.]

PURCHASE OF LEASEHOLD HOUSE, UTENSILS, AND GOOD-WILL OF BUSINESS.

say; one of such promissory notes for the payment of the sum of —— thousand pounds, and interest, at (*four*) *months after the date thereof, one other of such promissory notes for the payment of the like sum of —— thousand pounds, and interest, at (*eight*) months after the date thereof; and the other of the said promissory notes for the payment of the like sum of —— thousand pounds, and interest, at (*twelve*) months after the date thereof; AND ALSO that he the said [*purchaser*], his executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*vendor*], his executors, administrators, or assigns, interest for the sum of [*purchase money*], or on such part thereof as shall remain due and unpaid, after the rate of five pounds for each hundred pounds thereof, by the year, on the last day of each year of the said term of (*three*) years. AND *it is hereby further agreed*, that the said [*vendor*] shall remain in possession of the said premises, and be at liberty to use and enjoy the said utensils, implements, and fixtures, in the same manner as heretofore; *and also*, shall pay all rent, taxes, rates, assessments, and other outgoings, up to the said —— day of —— next; on which day the same shall be respectively delivered to the said [*purchaser*]. IN WITNESS, &c.

Covenant to pay interest yearly.

Vendor to carry on trade, and pay rent, &c. till completion of contract.

THE SCHEDULE to which the above (*or* within) written agreement refers.

Utensils, &c. specified in schedule.

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AGREEMENT *for the Purchase of the Right of Patronage of an* ADVOWSON, *or of the* GREAT *or* SMALL TITHES, *in Fee, for Life, or for Years.*

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—; BETWEEN [*vendor*], of &c., of the one part; and (*a*) [*purchaser*], of &c., of the other part.

Parties.

(*a*) *Vide post*, 182, (*a*).

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

Agreement to sell.

Parcels.

ADVOWSON.

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To deliver abstract,

FIRST, the said [*vendor*], for himself, his heirs, executors, and administrators, hereby agrees to sell to the said [*purchaser*], ALL THAT (*b*) the advowson, donation, right of patronage and presentation of, in, and to the rectory or parish, and parish church of ——, in the county of ——, and *of the fee-simple and inheritance thereof (*c*), free from all incumbrances, at or for the price or sum of —— pounds: AND ALSO to deliver unto the said [*purchaser*], within —— months from the date hereof, a full, complete, and perfect abstract of the title of the said [*vendor*] to the said advowson: AND if the counsel of the said [*purchaser*] should be of opinion that the said [*vendor*] has

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GREAT TITHES.

(*b*) "ALL the tithes† of corn, grain, and hay, and other great or rectorial tithes and tenths, which shall arise or grow due within the parish of ——, in the county of ——, with the appurtenances belonging to the impropriate rectory of ——, aforesaid."

SMALL TITHES.

"ALL the tithes, tenths, dues, and duties, usually paid or accounted as small, or vicarial tithes, which shall arise or grow due within the parish of ——, in the county of ——."

Describe the tithes in the body of the agreement,

"the said tithes."

FOR LIFE.

(c) If for life, say,

"for the natural life of the said [*purchaser*], (or *nominee* of &c.),"

FOR LIVES.

If for lives, say,

"for the natural lives of [*nominees*], of &c., and the natural lives and life of the survivors and survivor of them,"

FOR YEARS.

If for years, say,

"for the term of —— years from the date hereof,"

FOR YEARS DETERMINABLE ON LIVES.

If for years determinable on lives, say,

"for the term of —— years from the date hereof, if the said [*purchaser*] (or *nominee*, of &c.), should so long live,"

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† As to the distinction between great and small tithes, see 2 Wooddeson's Vinerian Lectures, 89; 3 Burn's Eccl. Law, 408, 6th ed.; 6 Bac. Abr. 714, 731; Gwill. ed. *Tythes*, (C), (D) and (K); Toller on Tithes, 59; Mirehouse on Tithes, 2; [Eagle and Younge's Tithe Cases, *passim*.]

a good title thereto, then that he the said [*vendor*], and all other necessary parties (*c*), and persons interested in the purchase money, shall, on or before the —— day of —— now next, by good and sufficient conveyances and assurances in the law, and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance, convey and assure the said advowson with the appurtenances, unto, and to the use of, the said [*purchaser*] (*d*), his heirs and assigns, or as he or they shall * direct, [*178] free from all incumbrances (*e*). AND THE SAID [*purchaser*],

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

To execute conveyance.

Agreement to pay purchase money.

(*c*) A husband is tenant by the curtesy of an advowson, though the church was not void during the marriage; Co. Litt. 29 a; Perk. s. 468; and a woman is dowable of an advowson in gross or appendant. Cro. Jac. 621; *post*, 181.

(*d*) for his life (*or* unto the said [*purchaser*], his heirs and assigns, for the natural life of the said [*nominee*], (*or* for the natural lives of the said [*nominees*], and the natural lives and life of the survivors and survivor of them), (*or* unto the said [*purchaser*], his executors, administrators, and assigns, for the said term of —— years, determinable as aforesaid),"

FOR LIFE OR LIVES.

FOR YEARS.

(*e*) If for life or years, say,

" AND ALSO shall, at the execution of the said conveyance, at his own charges, deliver unto the said [*purchaser*] true and attested copies of all deeds, evidences, and writings, concerning the said advowson; *and* in the said conveyance enter into the usual covenant for the production of the originals,† and to permit the said [*purchaser*] to have

FOR LIFE OR YEARS.

To deliver attested copies of title deeds, and covenant to produce originals.

[† It is clear that a purchaser is entitled to a covenant for the production of deeds not delivered to him, and is not bound to rely upon the general equity (assuming such equity to exist) which every person interested in property has to call for the production of the deeds relating to it; *Barclay* v. *Raine*, 1 Sim. & Stu. 449. See also *Shore* v. *Collett*, Coop. 234; and a qualified covenant by a mortgagee to produce them whilst he continues mortgagee, is not sufficient. 1 Sim. & Stu. 451. If the deeds are not covenanted to be produced at the time, and remain in the hands of the vendor, he may, it seems, under his covenant for further assurance, be compelled to enter into a covenant for their production. *Fain* v. *Ayers*, 2 Sim. & Stu. 533. See further, as to the custody and production of Title Deeds, *post*, Vol. 4, p. 1, *et seq.*; and Dixon on Title Deeds, Chap. 3 and 4.]

Purchaser entitled to a covenant for the production of deeds.

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

for himself, his heirs, executors, and administrators, hereby agrees to pay the said sum of —— pounds unto the said [*vendor*], upon the execution of the said conveyance. AND *it is further agreed*, that the conveyance to the said [*purchaser*] shall be prepared by him at his own costs and charges; but that, in all other respects, each of the said parties shall pay the fees of his own counsel, and the charges of his own solicitor: AND that in case of the decease, cession, deprivation, or relinquishment of the present incumbent of the said advowson, before the said —— day of ——, the said [*vendor*] shall duly present such person to the said advowson, as the said [*purchaser*] shall nominate: AND that if the presentation to the said advowson should devolve on the crown, in consequence of the present or any succeeding incumbent being promoted to a bishopric (either) before (or after) the said —— day of ——, this contract shall not be affected thereby, nor shall the said [*purchaser*] be entitled to any deduction out of the said purchase money (*f*). (*Add clauses, time to be the essence of the contract, and for liquidated damages, ut ante*, 79, 158, 148). IN WITNESS, &c.

Purchaser to pay for conveyance;

but in other respects each party to pay his own counsel, &c.

In case of incumbent's death before conveyance, purchaser to nominate next incumbent.

If incumbent be made a bishop, contract not to be affected.

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any fresh copies thereof respectively from time to time, at his own expense:"

Deeds relate to property of greater value.

Or if the purchase be in fee, and the deeds relate to other property of greater value than the advowson, the above form, or the form, *ante*, 85,(*m*) may be used.

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On promotion of clergymen to bishoprics, the crown is entitled to present for next turn, except in the case of donatives.

(*f*) Upon the promotion of any spiritual person to a bishopric, * whether in England, or in the Isle of Man, all the benefices or dignities, except donatives, which he was possessed of before such promotion, are void upon his consecration, and upon his confirmation in case of translation; and the king is entitled for that turn to present to them in right of his royal prerogative, although the advowson belongs to a common person. 2 Bla. Com. 383; Wood's Inst. 37, 10th ed.; 3 Com. Dig. 198; *Esglise*, (H 6); 2 Burn's Eccl. Law, 3, 6th ed.

Bishop may prevent avoidance by retainer.

But the bishop may prevent the avoidance by dispensation of *retainer* of such benefices which he had, if obtained before his consecration, or confirmation of his election; which is commonly called a *commendam retinere*, and is usually granted by the Archbishop of Canterbury, according to the 25 Hen. VIII. c. 21, upon the king's mandate expressing his consent to it, as the true patron of the benefice for that turn; and it seems that by a *commendam* for life, and for the time of continuing in the bishopric, the turn of the crown is answered, and in such a case the proper patron shall

present upon the death or translation; but that the right of the crown shall not be defeated by a *commendam* granted for a term of months or years certain and limited. Gibson's Codex, 763. 913, 914, 915, 2d ed. And see the great case of *commendam, Colt & Glover* v. The Bishop of *Coventry and Lichfield*, Hob. 140.

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

Commendam retinere for life, the patron shall present next.

This, however, appears to have been an usurpation of the crown, and anciently the law was taken to be, that the rightful patron ought to present; and, as Levinz says, there is little or no reason that the king should present, because he has promoted the parson; for the church is the patron's church, and it is reasonable he should have the presentation of a parson thereto, (under whom he and his tenants and servants are to live), whose manners, doctrine, religion, and conversation, ought to be such as he shall approve: and, by the same reason, if the king promote my chaplain, of my family, or my bailiff, or other servant, he may impose another upon me. That anciently the king had no such prerogative is clear;—1. Because no mention is made of any such prerogative either in the king, or the pope, as certainly there would have been, if any such thing had then been.—2. There is no mention of it in the stat. *de prerogativâ Regis*, 17 Edw. II. st. 1, which for the most part is but a sum or collection of certain prerogatives that were known law long before; 5 Bac. Abr. 489, nor in Stamford's treatise upon that statute, (see particularly cap. 8);—3. And the 5 Edw. II. 148, in the book published by Serjt. Maynard, it appears that *Hugh de Courtney* brought a *Quare impedit*, and counts, that the Countess of *Albemarle* was seised, and presented a clerk, who was made a bishop, and so derives a title to the plaintiff to present; but there is no mention of the king's prerogative, or any presentment by him upon the parson's promotion to the bishopric;—4. Nor is any such thing mentioned in any of our ancient books, as Glanville, Bracton, *Britton, Fleta, Doctor and Student, (see particularly Dial. 2, c. 36, 37, p. 218. 220, 18th ed.) &c.; and it has been denied to be law, as in Dyer, 228 b; 3 Lev. 378.

But it seems the crown had not this prerogative anciently.

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But the king's prerogative in such cases has been favoured since, and the law has now been settled, however repugnant to reason, as Dr. Watson says, (Clergyman's Law, 74, 4th ed. cap. 9), that the king shall present upon such an avoidance. *Wright's* case, Moor. 399; *Edes* v. *Waller*, Vaughan, 19; *Rex* v. *Episcop. London*, and Dr. *Lancaster*, 3 Lev. 377; 1 Ld. Raym. 23; Holt, 586; Salk. 540; 4 Mod. 206; 1 Show. 441. Mr. Justice *Dolben* said, however, it had been always grumbled at; that it never came in question, but some Judge or other was against it; it having been so common in great livings, that the true patron in St. Andrew's, Holborn, had not presented above once in a hundred years, when he presented Dr. Stillingfleet; and he added, the church would suffer by it, because there was no one who had a great living, but would present a blockhead, who was not likely to be made a bishop, in order to preserve his pre entation. 1 Show. 461, 462, 463.

The king's prerogative right to present, is now clearly established.

The king has this prerogative whether the church be new or old; and

The king has

PURCHASE OF ADVOWSON, OR GREAT OR SMALL TITHES.

this prerogative, although the advowson be newly created, and he has it *toties quoties*.

it extends as well to the second, third, and all other successive promotions to bishoprics from the same benefice or dignity. Gibson's Codex, 763, 2d ed. Thus, by the 1 Jac. II. it was enacted, that St. James in the Fields should be divided from the parish of St. Martin, and a church erected there; and that it should be a parish of itself; and it was determined in The *King* v. Bishop of *London* and *Birch*, 3 Lev. 382; 2 Salk. 540; 4 Mod. 200; 1 Show. 164, *S. C.*, on the promotion of the rector of the parish of St. James to a bishopric, that the king has the same prerogative in churches newly erected, as in the old, to present on promoting the parson to a bishopric; and in the above case of The *King* v. Bishop of *London*, and Dr. *Lancaster*, 3 Lev. 377, the crown presented thrice successively to the living of St. Martin in the Fields: and so, where the rector of Bow Church, &c. united into one parish by the 22 Car. II. c. 11, s. 63, was created Bishop of Rochester, King Geo. I. by his prerogative, in 1720, presented Dr. Lisle, who being afterwards created Bishop of St. Asaph, King Geo. II. in 1744, presented Dr. Newton in like manner. *Grocers' Company* v. Archbishop of *Canterbury*, 3 Wils. 216; 2 W. Black. Rep. 770, *S. C.* Elsley's ed.

Quære, whether this doctrine extends to Ireland.

But it is said that, by a law in Ireland, no person can accept a bishopric there, until he has resigned all the preferments which he has in *England:* which preferments being void before the acceptance of the bishopric, it seems that the king in such case shall lose the presentation; 1 Burn's Eccl. Law, 142, 6th ed. The stat. 7 Edw. IV. c. 2; 1 Vol. Irish Statutes, 32, that none shall purchase benefices *in commendam* from Rome, does not extend to this. And see *Evans* & *Kiffin* v. **Ascuith*, Noy, 93; the notes to Dyer, 228 b; 3 Wils. 232; and Wood's Inst. 37, *contra*.

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The right of the crown postpones, but does not defeat the right of the person having the next presentation.

This right of the crown to present upon promotion, postpones the right of any grantee who has the next avoidance; as in the case put in Co. Litt. 379 a, that if a man seised of an advowson in fee, whether in gross or appendant, take a wife, by act in law the wife is entitled to the third presentation, if the husband die before: F. N. B. 148, C; 150, G; Perk. s. 342, 343; Co. Litt. 32 a: and if the husband grant the third presentation to another, and the husband die before the church becomes void, the heir shall present twice, and the wife shall have the third presentation, and the grantee the fourth; for, in this case, it shall be taken to be the third presentation, which he might lawfully grant. Thus, in the *Grocers' Company* v. Archbishop of *Canterbury*, in which three patrons had a right to present by turns, it was decided by the whole Court, that the prerogative presentations cannot be considered as *turns*, or deprive a patron of his turn; for a prerogative presentation upon the promotion of an incumbent to a bishopric is by act of law, which cannot operate to the injury of a third person; for *constructio et actus legis nulli facit injuriam.* Co. Litt. 148, 183 a, b; 2 Inst. 287; Dyer, 35 b. In fact this is the *fifth* vacancy; but with respect to the patrons, it is but the *third* opening or

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avoidance, wherein the presentation of a patron, having the third turn, could take place. 3 Wils. 232; 2 W. Blacks. Rep. 773; *Vide* Perk. s. 331, 332; Hal. MS. n.; Co. Litt. 32 b, (2).

A grant of the next presentation means that which the grantor is next entitled to.

So the grant of the next presentation to a benefice was decided to mean the next which the grantor would by law be entitled to make; and that, therefore, if the present incumbent be made a bishop, a covenant for title in the grant is not broken, and the grantee may present on the next vacancy. *Cailland* v. *Troward*, 2 Hen. Blacks. 324; *Troward* v. *Cailland*, in error, 6 Term Rep. 439; affirmed in the House of Lords, *Ib.* 778.

Next presentation cannot be granted after church is vacant.

The grant of the next presentation, or of an advowson, made after the church is actually vacant, is a void grant *quoad* the fallen vacancy. [*Brooksby's* Case, Cro. El. 174; *Baker* v. *Rogers*, *Ib.* 788.] But it is good as to the advowson itself. *Wolferstan* v. Bishop of *Lincoln*, 2 Wils. 174; 3 Burr. 1504; 1 Wm. Blacks. Rep. 490; 2 *Ib.* 1054, and Serj. Hill's MS. notes, Elsley's edit. [And, even if the contract be simoniacal, the conveyance of the advowson made in pursuance of such contract is void only as to the next presentation. *Greenwood* v. Bishop of *London*, 1 Marsh. 292; *S. C.* 5 Taunt. 724.]

Purchase of advowson, incumbent being *in extremis*, clerk not being privy, next presentation good.

Where a person having notice that the incumbent of a rectory was on his death-bed, and that it was uncertain whether he would live over the night, purchased the advowson; the incumbent died the next day; whereupon the purchaser presented his clerk, who was not privy to the contract: and the Court was of opinion, that the presentation was not void, it not appearing to have been made upon a simoniacal contract. *Barrett* v. *Glubb*, 2 Wm. Blacks. Rep. 1052; [*S. C.* Bac. Abr. Title "Simony," (A); but see 1 Marsh. 311.]

Purchase of next presentation, incumbent being *in extremis*, simoniacal.

[But this case has been shaken by the late determination of the Court of King's Bench, in *Fox* v. *Bishop of Chester*, 2 Barn. & Cress. 635; *S. C.* 4 Dowl. & Ryl. 93, where the owner of an advowson contracted for the sale of the next presentation, when the incumbent was expected to be at the point of death, (he died the same afternoon); and it was held, that the contract was simoniacal, and the presentation made by the purchaser void, though the contract was not made with a view to present any particular person, and the person afterwards presented was not privy to the transaction. *Abbott*, C. J. observed, in regard to *Barrett* v. *Glubb*, that though it contained the opinion of many very learned judges in favour of the validity of a sale of the next turn, made when the death of the incumbent was expected to take place, yet that it had not the full weight of a judicial decision, as the Lord Chancellor only decreed a conveyance of the advowson, and did not order the vendor, who remained the legal owner of the advowson, to present the purchaser's nominee. His Lordship also observed, that there had been a treaty for the purchase some time before the contract, (which was not mentioned in the case to the Common Pleas), and it did not appear that the vendor knew of the incumbent's dangerous illness when the *contract* was made.

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[It is evident that the Lord Chief Justice did not think the sale of the next turn distinguishable from that of the advowson in regard to the point in question. Indeed, as we have seen (*supra*, 181,) that in the latter case the simony only affects the next presentation, there seems to be no solid distinction between them.]

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

AGREEMENT *for the Purchase of the* NEXT PRESENTATION *to a Parsonage.*

Parties.

ARTICLES OF AGREEMENT made this —— day of ——, 18—; BETWEEN [*vendor*], of &c., for himself, his heirs, executors, and administrators, of the one part; and [*purchaser*] (*a*), of &c., for himself, his heirs, executors, and administrators, of the other part.

Agreement to sell.

THE said [*vendor*] agrees to sell to the said [*pur-*

Roman Catholics cannot present to benefices;

and grants by them must be to protestant purchaser.

(*a*) By the stat. 12 Ann. stat. 2, c. 14, s. 1, Roman Catholics are disabled from presenting to any benefice; and every such presentation is declared void to all intents and purposes. By the stat. 11 Geo. II. c. 17, s. 5, every grant made of any advowson, or right of presentation, collation, nomination, or donation to any benefice, by any person professing the Roman Catholic religion, or by any mortgagee, or trustee of such person, shall be null and void; unless it be for valuable consideration to a protestant purchaser. 3 Cru. Dig. 26, 2d ed.

Clergymen not to purchase the next presentation, and be presented thereupon.

The stat. 12 Ann. c. 12, s. 2, after reciting "Whereas some of the clergy have procured preferments for themselves by buying ecclesiastical livings, and others have been thereby discouraged," enacts, "That if any person, from and after the twenty-ninth day of *September*, one thousand seven hundred and fourteen, shall or do, for any sum of money, reward, gift, profit, or advantage, directly or indirectly, or for or by reason of any promise, agreement, grant, bond, covenant or other assurance, of or for any sum of money, reward, gift, profit or benefit whatsoever, directly or indirectly, in his own name, or in the name of any other person or persons, take, procure, or accept the next avoidance of, or presentation to any benefice with

[*183] cure of souls, dignity, *prebend, or living ecclesiastical, and shall be presented or collated thereupon, that then every such presentation or collation, and every admission, institution, investure and induction upon the

chaser], for the sum of —— pounds, the first and next donation, nomination, presentation, and free disposi-

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

same, shall be utterly void, frustrate, and of no effect in law, and such agreement shall be deemed and taken to be a simoniacal contract; and that it shall and may be lawful to and for the Queen's majesty, her heirs and successors, to present or collate unto, or give or bestow every such benefice, dignity, prebend and living ecclesiastical, for that one time or turn only; and the person so corruptly taking, procuring, or accepting any such benefice, dignity, prebend, or living, shall thereupon, and from thenceforth, be adjudged a disabled person in law to have and enjoy the same benefice, dignity, prebend, or living ecclesiastical, and shall also be subject to any punishment, pain or penalty, limited, prescribed or inflicted by the laws ecclesiastical, in like manner as if such corrupt agreement had been made after such benefice, dignity, prebend, or living ecclesiastical, had become vacant; any law or statute to the contrary in any wise, notwithstanding."

In the late Serjt *Hill's* copy of Sir *Wm. Blackstone's* Rep. under *Barret* v. *Glubb*, 1053, he says, from the title of the act, the general opinion has been, as mentioned by Ch. J. *de Grey* in this case, that the statute hath disabled every clergyman from purchasing the next presentation of any church preferment; but it is observable, that the purview of the act does not extend to a purchase by a clergyman, unless he, or some other for whom he purchased it, be presented or collated thereupon; and on the other hand, though the purchaser was a layman, yet if he afterwards took orders, and was presented or collated to the living, &c. the next presentation of which he had purchased, the case would be within the purview.

But it appears by the following opinion of the learned Mr. *Fearne*, that the purchase of an advowson in *fee* by a clergyman, and a presentation of himself upon the death of the incumbent, is not within the statute:

But clergymen may purchase the advowson, and be presented on the next avoidance.

"I cannot say I see any thing to impeach the legality of the purchase by A. B. of the perpetuity of the advowson, or his being presented on the next avoidance, by a trustee of his own, to whom he shall have conveyed the advowson, previous to such avoidance. The 12th Ann. stat. 2, c. 12, prohibits a clergyman's purchasing the next avoidance, or presentation to any benefice for himself; but I do not apprehend that statute at all affects the case of a purchase of the perpetuity of the advowson, or affects the right of presentation in that case; and, consequently, it appears to me, that if A. B. by deed, grants the advowson to, and to the use of some person and his heirs, who, by another deed of even date, declares the conveyance to be in trust for the said A. B. and his heirs, the said A. B. may afterwards, upon the happening of an avoidance, be legally presented by his said trustee." Fearne's Posth. Works, 409. See the Rev. Henry Sir Henry Bate Dudley's Life, Annual Biography, 1825, appendix.

[It appears, from an observation made by Mr. *Bythewood*, in his copy

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

tion(*b*) of and to the rectory and parish church of —— in the county of ——, which shall or may happen, accrue, or arise, upon or in consequence of the vacancy or avoidance of such rectory or living, by death, cession, deprivation, or relinquishment, or by whatsoever other ways or means the said church shall first or next happen to be void: AND ALSO to deliver unto the said [*purchaser*], within —— months after the date hereof, an abstract in the usual manner of the title(*c*) of the said [*vendor*], to grant the next presentation of and to the said rectory and parish church: AND ALSO on receiving the said sum of —— pounds, to execute a grant, or other assurance, of the next presentation to the said rectory and parish church unto the said [*purchaser*], his executors, administrators, or assigns(*d*),

To deliver abstract,

To execute conveyance, at purchaser's expense.

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of the present work, that he did not coincide in the view taken by Mr. *Fearne*. That view, however, is consistent with the generally received opinion of the profession upon the subject, and, it is conceived, with the sound construction of the statute; for it seems to be impossible, without a manifest departure from the strictness of construction which is always given to a penal statute, to treat the words "next avoidance or presentation," as extending to an advowson.]

Purchase of next presentation, with intention to present a certain person, not simony, it seems.

(*b*) Where a person purchased the next presentation to a benefice, the church being then full, with an intention to present a particular person, a subsequent presentation of that person was formerly deemed simony; but it is now an universal practice to purchase the next presentation to a living, the church being full; and there is no modern instance where presentation under such circumstances has been questioned. 3 Cru. Dig. 33, 2d ed.

Title to advowson in *gross* should be shewn for more than sixty years.

(*c*) The stat. 1 Mar. stat. 2, cap. 5, s. 4, having repealed the several statutes of limitation as to advowsons, the title to an advowson in *gross* should be carried back to the original grant; or at least the presentations, by the persons under whom the vendor claims, should be shewn so far back as to satisfy a reasonable mind of the goodness of the title. But if the advowson be *appendant* to a manor, &c. a title for sixty years may, as in the case of lands, be generally sufficient.

Right of next presentation vests in executors.

(*d*) The next presentation to a church, if not disposed of by will, vests in the executors or administrators. *Smithley* v. *Chomeley*, Dyer, 135 a; Wentw. Off. Ex. 36, Wilson's ed.; 13 Vin. Abr. 84; *Faits* (M. a. 24).

[It was lately held by the Court of King's Bench (*diss.* Lord *Tenterden*), that where a prebendary, who had the advowson of a rectory in right of his prebend, died during the vacancy of the church, his personal representative was entitled to that turn. *Rennell* v. Bishop of *Lincoln*, 7 Barn. & Cress. 113, reversing judgment in C. P. 3 Bing. 223.]

or as he or they shall direct; in which all proper and necessary parties(*e*) and persons* beneficially interested in the purchase money shall join; and which shall contain the usual and proper covenants for title, quiet enjoyment, and further assurance; and shall be prepared by, and at the expense of, the said [*purchaser*]: And also to deliver, at his own charges, to the said [*purchaser*], at the execution of the said conveyance, true and attested copies of the several title deeds, evidences, and writings, relating to the said rectory and parish church; and by the same conveyance covenant, in the usual manner, to produce the same title deeds, evidences, and writings, and to permit the said [*purchaser*] to have future copies thereof at his own charges. And the said [*purchaser*] agrees, upon the execution of the said conveyance, to pay to the said [*vendor*], the said sum of —— pounds. (Add clauses,—*time to be the essence of the contract, and for liquidated damages, ut ante*, 158, 148). And *it is further agreed*(*f*), that if the present or any succeeding incumbent of the said rectory should at any time hereafter during his incumbency of the said rectory be created a bishop, whereby

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

To deliver attested copies; and covenant to produce deeds.

To pay purchase money.

If present or succeeding incumbent be made a bishop, purchaser to have the next presentation.

(*e*) The mortgagee of an advowson, whether appendant or in gross, has the legal right to present; but, until foreclosure, a Court of Equity will compel him to present the nominee of the mortgagor: because the mortgagee can make no profit by presenting to the church, nor can he account for any value in respect of it to sink or lessen his debt. *Amhurst* v. *Dawling*, 2 Vern. 401; *Gally* v. *Selly*, Com. Rep. 343; 1 Stra. 403, *S. C.* So a trustee must present the clerk of the *cestui que trust*. 2 Atk. 483; 2 W. Blacks. Rep. 1053.

Mortgagee and trustee must present nominee of mortgagor, &c.

[It is obvious therefore that an advowson can only be made available as a security to a mortgagee, or an annuitant, by means of power of sale. *Vide* Precedent of such a power in a Grant of Annuity, *post*, Vol. 4, p. 238.]

(*f*) This being the rule of law on the subject, *ante*, 178 (*f*)—it is mentioned on an honourable principle, that the purchaser may be aware of it, and provide accordingly. When it is probable the incumbent will be promoted to a bishopric, and sometimes when it is not probable, it is usual to insert a provision, should that event happen, to make a proportionable deduction from the purchase money, to be ascertained by two arbitrators, or their umpire; or to repay the purchase money, with interest at five *per cent*.

PURCHASE OF NEXT PRESENTATION TO PARSONAGE.

the right of presentation to the same rectory may devolve to the crown, then the said [*purchaser*] shall have the first or next turn or right of presentation to the said rectory, after the crown. IN WITNESS, &c.

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PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

AGREEMENT *for the Purchase of* FREEHOLD, COPYHOLD, *and* LEASEHOLD *Premises, for Lives, and for Years.*

Parties.

ARTICLES OF AGREEMENT, made and entered into the —— day of ——, 18—; BETWEEN [*vendor*], of &c., for himself, his heirs, executors, and administrators, of the one part; and [*purchaser*], of &c., for himself, his heirs, executors, and administrators, of the other part.

Agreement to sell.

FIRST, the said [*vendor*], in consideration of the sum of —— pounds, agrees to sell to the said [*purchaser*], the

Parcels.

fee-simple and inheritance in possession of ALL THAT

Freehold.

messuage or tenement, lands, and premises, situate at ——, in the county of ——, called —— Farm, containing by estimation —— acres, more or less, and now in the

Copyhold.

occupation of ——; AND ALSO the inheritance in possession, according to the custom of the manor of ——, in the said county of ——, of and in ALL THOSE several closes of arable land, situate in the said manor, containing by estimation —— acres, more or less, and now in the occupa-

For lives.

tion of ——: AND ALSO the estate of him the said [*vendor*], for the lives of [*nominees*], granted and demised by indenture, bearing date on or about the —— day of ——,

Reference to lease.

17—, and made between [*lessor*], of &c., of the one part; and the said [*vendor*], of the other part (*a*); (and afer-

(*a*) If the estate for lives were created under a power deriving its effect from the statute of uses, livery of seisin would be unnecessary. See Noy's Maxims, 298, 9th ed.

PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

wards perfected by livery of seisin), of and in ALL THAT piece of meadow land, situate, &c. AND ALSO ALL THOSE three cottages, situate, &c. and now held by the said [*vendor*], *for the remainder of a term of —— years, granted by indenture, bearing date on or about the —— day of ——, 17—, and made between [*lessor*], of &c., of the one part, and the said [*vendor*], of the other part: AND ALSO, at his costs, to make and deliver unto the said [*purchaser*], full, complete, and perfect abstracts of the title of the said [*vendor*] to the said freehold, copyhold, and leasehold premises respectively; but the said [*vendor*] shall not be required to produce any further evidence of the title to the said leasehold premises, for lives and for years, than the original leases, and all subsequent deeds and evidences relating thereto respectively: AND ALSO on or before the —— day of —— next, upon receiving the said purchase-money, by good and sufficient conveyances, surrenders (*b*), assignments, and assurances; to be prepared by and at the costs of the said [*purchaser*], and with the usual and other proper covenants for the title, for quiet enjoyment, and for further assurance; and with all necessary and proper parties, and persons beneficially interested in the purchase-money, to convey, surrender, assign, and assure unto the said [*purchaser*], or as he shall appoint,

For years. Reference to lease.

[*187]

To deliver abstract of title.

To convey.

(*b*) It is a good custom in a manor, that the steward or his deputy should have the sole right of preparing all the surrenders of copyhold tenements within the manor; and the Court will not grant a *mandamus*, where there is such a custom, commanding the steward to receive and examine a surrender prepared by any other person, although the requisite fees &c., have been tendered. *Rex* v. *Rigge*, 2 Barn. & Ald. 550. [The steward must make out his claim upon the *quantum meruit*, or upon the custom of the particular manor. *Everest* v. *Glyn*, 7 Taunt. 425.]

By custom, steward may have sole right of preparing surrenders.

Where there is no such custom, and where, by the custom, surrenders may be made out of Court, they are frequently prepared by the party's own solicitor. However, they are usually prepared by the steward; and if this practice were more general, it would sometimes prevent much mischief, inconvenience, and expense to the parties; as the steward is better acquainted with the different modes and customs of the manor, and with the customary tenements, than any stranger can be. See Fisher on Copyholds, 307, 2d ed.

PURCHASE OF FREEHOLD, COPYHOLD, AND LEASEHOLD.

the said freehold, copyhold, and leasehold premises respectively, free from all incumbrances; *But subject* to the rents and services for the said copyhold premises, and to the rents, covenants, and conditions, mentioned in the said indentures of lease, from the said —— day of —— next: AND ALSO that any fine, common or *customary recovery, covenant for production of title deeds, release, assignment, or surrender of any incumbrances, and of outstanding terms not already assigned to attend the inheritance, which shall be requisite or necessary to perfect the title to the said premises, shall be levied, suffered, made, and prepared respectively, by and at the expense of the said [*vendor*]: AND THE SAID [*purchaser*] agrees, upon the making of the said conveyances, surrenders, assignments, and assurances, to pay unto the said [*vendor*] the said purchase-money: AND ALSO, if required by the said [*vendor*], to covenant in the conveyance and assignment of the said leasehold premises, for payment of the rents, and performance of the covenants, in the said indenture of lease reserved and contained respectively; and to indemnify the said [*vendor*] therefrom, or otherwise, if required by the said [*vendor*], to execute a bond in a sufficient penalty, or a deed of covenant, to be prepared by and at the costs of the said [*vendor*], for payment and performance of the same rents and covenants, and for indemnifying the said [*vendor*] therefrom (*a*). (*If a part only of the leasehold premises are sold; or if the consent of the lessor be necessary*, vide ante, 164, 165, 167, 168. *If the title deeds relate to other premises*, vide ante, 85. *Add clause as to errors in description*, ut ante, 144, 145; *as to time being the essence of the contract*, ut ante, 79, 158; *for liquidated damages*, ut ante, 148.) IN WITNESS, &c.

Subject to rents, &c.

Vendor to pay for fines, recoveries, &c.

[*188]

To pay purchase money.

Purchaser to covenant for payment of rent &c., for leasehold, and to indemnify therefrom.

Vendor of leaseholds bringing an action on purchaser's covenant may compel production of deed.

[(*a*) For a form of such a bond, *vide post*, Vol. 4, p. 309. A separate bond or covenant is convenient, because the purchase deed, which otherwise contains it, is in the hands of the covenantor himself; though, in such a case, if the vendor bring an action on the purchaser's covenant, the Court will compel him to produce it, and allow the plaintiff to take a copy, at his (the plaintiff's) expense. *Blakey* v. *Porter*, 1 Taunt. 386; *King* v. *King*, 4 Taunt. 666. Where the deed contains any covenant on the part of the purchaser the vendor should always retain a copy.]

AGREEMENT *for the Purchase of* GROWING TIMBER.

PURCHASE OF GROWING TIMBER.

ARTICLES OF AGREEMENT indented, made, and entered into the —— day of ——, 18—; BETWEEN [*vendor*] (*a*), of &c., of the one part; and [*purchaser*], of &c., of the other part. Parties.

FIRST the said [*vendor*], in consideration of the sum of —— hundred pounds, of lawful money of Great Britain, to be paid by the said [*purchaser*], in manner hereinafter mentioned, and of the covenants and agreements hereinafter contained, and which by the said [*purchaser*], his executors, administrators and assigns, are to be observed and performed, *Hath* granted, bargained and sold, and by these presents *Doth* grant, bargain and sell, unto the said [*purchaser*], his executors, administrators and assigns, ALL *and singular the timber trees, and other trees hereinafter mentioned, being all set out and marked for sale, and standing, growing, and being in the several places hereinafter mentioned, (that is to say) —— hundred oak trees, Vendor sells timber. [*190]

(*a*) As tenant in tail is restrained from aliening the estate without fine or recovery, so he is restrained from charging it, or disposing, by contract or agreement, of the lasting improvements, after his death. Therefore, if tenant in tail article for sale of the trees growing on the inheritance, the vendee must sever them during the life of tenant in tail; for if he die before they are cut down, his issue shall have them as part of the inheritance, and the vendee shall not be permitted, after the death of tenant in tail, to fell one tree, though it be half cut down: for, as the tenant in tail has power over the inheritance only during his own life, he cannot delegate that power to another for a longer time: and consequently, whatever remains part of the inheritance at the death of tenant in tail, when his power over it ceases, must necessarily go to the heir to whom the inheritance belongs. Bro. Abr. *Contract*, &c. 26; *Liford's* Case, 11 Co. 50 a; Poph. 194; Hob. 173; 1 Pow. Contr. 127; 3 Bac. Abr. 64, n. Com. Dig. *Biens* (H). Sale of timber, &c. by tenant in tail.

PURCHASE OF GROWING TIMBER.

marked with the letter S, together with the boughs, lops, tops, and bark thereof; AND ALSO —— hundred ash and elms, also marked with the letter S, together with the boughs, lops, tops, and bark thereof, standing, growing and being in and upon the demesne, or demesne lands of ——, and in and upon several lands and grounds, called ——; all which said premises are now in the possession of ——: TOGETHER (*b*) with full and free liberty, power, and authority, for the said [*purchaser*], his servants, agents, and workmen, and every of them, to fell and cut down the said trees, at all reasonable and convenient times, and to lay and place the bark of the oak trees in convenient parts of the premises to dry: AND the said trees and wood, with the bark of the oaks, and the boughs, lops, and tops, of the whole of the said trees, to draw, remove, carry off, and take away in shares, in and by the most usual and convenient ways and parcels, at any time on or before the (*twenty-ninth*) day of (*September*), next: *And also* free liberty, power, and authority to and for the said [*purchaser*], his executors, administrators or assigns, and his and their servants, agents, and workmen and other person and persons to whom they shall sell and retail the said timber and wood, or any part thereof, to dig saw-pits, and break up and saw the said timber in proper and convenient parts of the said premises, in and upon which the said timber and wood stand and grow, at any time before the said (*twenty-ninth*) day of (*September*) next, without paying or making any satisfaction to the said [*vendor*], his heirs, assigns, or underte-*nants. AND THE SAID [*purchaser*], in consideration of the premises, and the bargain and sale of the said trees and bark, made to him as aforesaid, *Doth* for himself, his heirs, executors and administrators, covenant, promise, and agree to and with the said [*vendor*], his executors, administrators and assigns, by these presents, that he the said [*pur-*

Power to cut and carry away timber.

Power to dig pits to saw timber on premises.

Covenant to pay purchase money on certain days.

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(*b*) Although on a grant or sale of trees, a right to cut them down and carry them away is implied by law, Noy's Maxims, 55, 9th ed.; Plow. Com. 16; Finch's Law, 63; 11 Co. 52 a. [*Vide* also as to this principle, *post*, Vol. 4, p. 246.] Yet it is prudent to insert this provision, as it gives greater powers than the law would imply.

chaser], his heirs, executors, or administrators, or some of them, shall and will well and truly pay or cause to be paid unto the said [*vendor*], his executors, administrators, or assigns, the sum of —— hundred pounds, of lawful money of Great Britain, in manner following, that is to say (*mention the days of payment*), without any fraud or delay in any wise: AND ALSO that he the said [*purchaser*], his executors, administrators, or assigns, shall and will fell, hew, and cut down the said oak, ash, and other trees, and every of them, and draw, remove, and take away the same, with the boughs, lops, tops, and bark thereof, within the time before limited and agreed on for that purpose, and according to the true intent and meaning of these presents: AND ALSO shall and will, within one month next after the said (*twenty-ninth*) day of (*September*) next, at his or their own costs and charges, fill up all such sawpits as shall for the purposes aforesaid have been made by him or his servants, on any of the said lands; *and also* fence, amend, and repair, all the hedges and fences in and about the said lands, in all such places as shall be broken, or otherwise damaged or destroyed, in felling, hewing, o carrying away the said timber, on being allowed by the said [*vendor*] hedge-wood for that purpose. AND *it is further agreed*, that if any dispute should arise between the said parties, touching any clause, matter, or thing, relating to the sale of the said timber, the same shall be referred to and finally settled by two indifferent persons, one of whom to be chosen by each of the said parties; and if such two persons should not agree, then by an umpire to be chosen by them (*c*). IN WITNESS, &c.

PURCHASE OF GROWING TIMBER.

Covenant by purchaser to cut down and remove timber, &c. by times agreed on.

To fill up saw pits,

and repair hedges.

Disputes to be referred to arbitration, or umpirage.

(*c*) If the vendor be tenant in tail, say,

"AND ALSO that if the said [*vendor*] should die before the *said (*twenty-ninth*) day of (*September*) next, and the said [*purchaser*] should be prevented from felling, sawing, or carrying away the said timber, as aforesaid, then the executors or administrators of the said [*vendor*], shall pay or allow unto the said [*purchaser*], such sum of money, by way of damages, as he shall thereby sustain; the same to be ascertained by arbitration, or arbitration and umpirage, as aforesaid (*d*)."

If vendor die before removal, purchaser to have allowance.

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(*d*) *Vide ante*, 189, (*a*).

PARTITION BY CONVEYANCE, &c.

AGREEMENT FOR A PARTITION.

PARTITION may be effected by four different modes—

I. *By Conveyance*, &c.
II. *By Writ of Partition at Common Law.*
III. *By Bill in Equity.*
IV. *By Private Act of Parliament.*

I. BY CONVEYANCE, &c.

At common law.

At the common law, estates of freehold, either corporeal or incorporeal, could not be voluntarily partitioned by joint-tenants without a deed. Litt. s. 290; Co. Litt. 169 a, 187 a. Tenants in common, however, might have made a partition by parol without deed, if, as to corporeal estates, they afterwards perfected the partition in severalty by livery of seisin, Co. Litt. 169 a; and coparceners, whether of lands lying in livery or in grant, and although of lands situate in different counties, might have made a partition by parol without deed, Litt. s. 250; Co. Litt. 169 a; and joint-tenants for years might have made partition by parol without a deed. Dyer, 350 b, pl. 20; Co. Litt. 187 a. *Vide* Roberts on Frauds, 283.

Since the statute of frauds.

Since the statute of frauds and perjuries, a *writing* is necessary to perfect a partition of lands among tenants in common or coparceners, though as to joint tenants in fee a *deed* is necessary now, because it was so at common law. Phillips on Evidence, 439, 4th ed. Mr. Cruise, [*194] following Sir Wm. Blackstone, must be *mistaken when he says, "The statute of frauds has abolished this distinction, and made a *deed* equally necessary in all cases." 4 Cru. Dig. 96, s. 16, 2d ed; 2 Bla. Com. 324; and see *Johnson* v. *Wilson*, Willes, 248, 253.

Proper conveyance from one joint-tenant to another, a release.

The proper mode of conveyance from one joint-tenant to another, and the most effectual to sever the joint-tenancy, either of the whole or part of the *immediate freehold* of lands, is a *release*. *Chester* v. *Willan*, 2 Saund. 97; livery, or what is equivalent to it, not being necessary, because each has a *seisin* in every part, and in the whole, *per mie*† *et per tout*. Litt.

Per mie et per tout.

† *Mie, mi,* or *my;* a contraction of *moitié*, the half, or one of several equal parts: *coæqua vel media pars.* Cowel, *Moyety.* *Et vide* Litt. s. 277; Kelham, *mi,* et *my.* When this became a technical expression, it is probable a joint tenancy was not usual between more than two persons;

s. 288; Hawk. Abr. Co. Litt. 271, 7th ed. Yet conveyancers, from an abundance of caution, generally adopt the lease and release, because that is the usual modern way of conveying real estates, whether the lease be necessary or not, and from a fear that the joint-tenancy might have been severed, to meet that case by creating an estate by lease capable of being enlarged by release. However, the lease is rarely necessary.

PARTITION BY CONVEYANCE, &c.

As coparceners, including heirs in gavel-kind, have, as well as joint tenants, privity of estate and possession; Co. Litt. 163 b; 169 a; 175 b; 2 English Copyholder, 425; and are seised *per my et per tout*, Bro. Abr. *Distresse*, pl. 37; it seems the proper conveyance between them is a release. However, coparceners may convey to each other, either by release or feoffment. Gilb. Ten. 73; Perk. s. 193; Harg. n. Co. Litt. 169 a, (2).

Coparceners and heirs in gavel-kind—a release.

But as tenants in commom have only between them a privity in possession, and not in estate, Co. Litt. 169 a, they cannot release to each other the immediate freehold of lands, without previously creating an estate capable of enlargement by release, as by a bargain and sale for years, because a release by way of *mitter le estate* supposes the releasee to have some estate in the whole of the lands released to him; but tenants in common, in supposition of law, have several distinct undivided freeholds in every part of the lands, and one of them cannot transfer any part to the other without livery of seisin, or what is equivalent to it. Co. Litt. 200 b; 3 Bac. Abr. 694; *Joint tenants*, &c. (I) 3, (2); Gilb. Ten. 73-4; Hawk. Abr. Co. Litt. 365.

Tenants in common—lease and release.

Partition may be made of things lying in grant, as of a reversion, that one shall have the reversion of certain acres, and another shall *have the reversion of other acres. F. N. B. 62, D; Co. Litt. 169 a; 16 Vin. Abr. 217. *Et vide* Fearne's Posthumous Works, as to severing a joint-tenancy of a vested remainder, 243.

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As livery of seisin cannot be had of things lying in *grant*, the proper conveyance of *incorporeal* hereditaments, namely, advowsons, tithes, commons, ways, offices, dignities, franchises, and rents, and of the reversions and remainders of lands from one joint-tenant to another, is a release;

Proper mode of conveying things in grant on partition.

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after it became common between three or more persons, the word *moitié* was retained, though in strict propriety in the latter instance *partie* should have been used instead.

A *moiety* was frequently used by the writers of Shakespeare's age, as a portion of any thing, though not divided into two equal parts; and Shakespeare commonly uses it for *any part* or *division*, though the strict sense of the word *moiety* is *half, one of two equal parts*. Shakespeare, Vol. 4, p. 464; Vol. 8, p. 339, ed. 1811. See *Halfendeal*, Cowel's Interpreter.

Moiety, anciently, meant the half, or one of several equal parts.

PARTITION BY CONVEYANCE, &c.

from one tenant in common to another, a grant; from one coparcener, or heir in gavel-kind to another, either a release or grant. The existence of these incorporeal hereditaments is merely in idea and abstracted contemplation; though their effects and profits may be frequently objects of our senses: 2 Bla. Com. 20, *et vide* Co. Litt. 9 a: and a remainder or a reversion of lands, being only a present right to future enjoyment of the possession, has in the same manner no existence but *in jure et intellectu.*

Where there were three joint tenants for life, and one of them by deed "granted, bargained, sold, assigned, set over, and confirmed" to another of them all the right, estate, title, interest, claim, and demand of the grantor, of and to the lands held in jointure, it was adjudged without argument, on special verdict, that this deed was sufficient to pass the part or share of the joint-tenant to the other. *Chester* v. *Willan*, 2 Saund. 96 a. And the Chief Justice said, that though the *jury* found that he *granted*, yet the Court would adjudge that he *released*, which is the proper conveyance for one joint-tenant to pass his estate to the other.

Equal partition by coparceners binds heirs in tail.

A partition of lands intailed between coparceners, if it be equal at the time of the partition, will bind the issue in tail. Co. Litt. 173 b.

Equal partition by husband and wife, she being coparcener in fee, binds her and her heirs;

The *husband* of a coparcener in fee-simple, may make an *equal* partition of the estate in coparcenary in yearly value; but the wife must be a party to the partition, otherwise it will not bind her or her heirs. Bro. Abr. *Partition*, pl. 1 and 28. If the partition be unequal, it will bind the husband, but it will be *voidable* by the wife or her heirs, after the husband's death, and consequently may be *confirmed* by the wife or her heirs after his death, by leasing or taking possession of the unequal part, receiving the rents, or doing any other act amounting to a confirmation of an estate which is not *void*, but voidable. Co. Litt. 170 b, 171 a; *et vide* 4 Bac. Abr. 13, Gwill. ed. *Leases* (C); 7 Ibid, 64, *Void and voidable;* Serjt. Williams's note, 2 Saund. 180 (9); 1 Roper, *Husband and Wife*, 93; Com. Dig. *Confirmation*, (A) (D 1); *Baron and Feme*, (S 1). And a coparcener and her husband may grant a rent in fee for equality of partition out of her *part, if the partition be equal. Co. Litt. 169 b. And the reason of this anomaly, contrary to the general principles of the law, that a husband cannot do any act to affect the inheritance of his wife, Lord *Coke* says is, that husbands and wives are compellable by [the common] law to make partition; and that which they are compellable to do in this case by law, they may do by agreement without process of law; but it is contrary of joint-tenants, for they are in by purchase, and were not compellable by the common law to make partition; and therefore upon partition between them, a rent cannot be *reserved* for equality of partition. *Marshe* v. *Smith*, 1 Leon. 27.

and they may grant rent for equality of partition.

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Equal partition binds infant coparcener.

So an equal partition will bind an infant coparcener, because a writ of partition lies in such case at common law; Co. Litt. 171 a; but an unequal partition is *voidable*, either during infancy, or afterwards; yet it

may be confirmed. Litt. s. 258. A *prochein amy*, or a guardian of an infant, can only make an equal partition to continue during the infancy. Bro. Abr. *Particion*, pl. 1: *sed vide* some loose cases *contra*, 2 Roll. Abr. 256 (E) pl. 1, 3, and 4; 16 Vin. Abr. 222 (E). PARTITION BY CONVEYANCE, &c.

But in all these cases of partition, by deed taking effect under the principles of the common law, by tenants in tail, husband and wife in right of a wife seised in fee, and infants, who are *coparceners*, to make it binding, nothing more than a partition should be made; the course of descent should not be altered; the estate should not be conveyed to uses; a married woman or an infant should not thereby attempt to gain a power over the lands, to be executed during their disabilities, by a mere deed or writing. On partition by coparceners, tenants in tail, &c. nothing further should be done.

Partitions by deed, by tenants in tail, *femes covert*, and infants, who are joint-tenants, or tenants in common, are governed by the same rules as conveyances, or other acts done by them. Partition by deed, by joint-tenants, and tenants in common, governed by common law rules.

Consequently, to partition by deed the estate of a tenant in tail, or a married woman who is a joint-tenant or tenant in common, a fine or recovery is necessary to make it binding on the woman and her heirs, or on the heirs in tail. And to avoid the uncertainty of a possession depending on the doubtful circumstance, whether a partition was equal at the time of making it, even tenants in tail, and husband and wife seised in fee in right of the wife of an estate in coparcenary, should levy a fine, or suffer a recovery.

The act of an infant, not strictly authorized by law, is not to be depended on.

Deeds of partition at common law between coparceners, have annexed to them a *warranty* in law for the benefit of the parceners and their heirs; Co. Litt. 174 a, 384 a., to continue only while the privity of estate *remains; therefore, if one of the coparceners, or her heirs, alien in fee any part of the lands allotted, the implied warranty ceases. *Vide* Litt. s. 262; Co. Litt. 174 a. This implied warranty is not extended for the benefit of an assignee, either of part or the whole, Co. Litt. 384 b; 4 Co. 121 b, although the lands purchased by him would remain liable to the implied warranty, in favour of a coparcener or her heirs, who had not aliened in fee either part or the whole of her allotment. Noy's Maxims, 25, 61, 5th ed.; 78, 156, 9th ed.; *Bustard's* case, 4 Co. 121 b. But it seems that if, in either of these cases, the alienation had been only of part of the *estate*, as for years, life, or in tail, then, on account of the reversion in fee remaining, the implied warranty would continue. *Vide* Co. Litt. 173 b, as to *eviction* for these estates. [And see *post*, Vol. 4, p. 87.] Implied warranty on partition by deed between coparceners. [*197]

In all partitions by deed, between other persons, and also between coparceners, when it is effected by means of a joint conveyance to uses on the seisin of a stranger, there is no implied warranty: and therefore it is usual to insert mutual covenants for the title against the acts of the No implied warranty on partition by conveyance to uses.

PARTITION BY CONVEYANCE, &c.

partitioners, and the person under whom they claim; but in order to give a recompense in value, in case of eviction by a title paramount, there should be *general* covenants against all mankind. *Vide* 4 Cru. Dig. 96, 434, 2d ed.; *et vide* the note on warranty *infra*.

Parol agreement for partition.

A *parol agreement* for a partition, put in execution, and acquiesced in for a long time, will be enforced by a Court of Equity, if the persons who made the agreement had a right to contract; but an agreement for a partition, by the husband of a joint tenant, and consequently of a tenant in common in fee, will not bind the inheritance of his wife; *Ireland* v. *Rittle*, 1 Atk. 542; or of a coparcener, unless she be a party to it. Co. Litt. 169 b. Mr. Hargrave, n. Co. Litt. 171 a, (2), seems to have mistaken *Ireland* v. *Rittle*. The doctrine of Littleton and Lord Coke only extends to coparceners.

A parol partition between tenants in tail, has been decreed to bind the issue in tail. 2 Vern. 233.

And a parol partition by the guardian of an infant tenant in common, who confirmed it by granting leases of the entirety of his allotment after he came of age, and acquiesced in it for seventeen years, and the lessees of the other tenant in common having made improvements on the faith of the title being in severalty, raises an equity which will prevent the interposition of the Court to disturb what has been done. And the plaintiff is not entitled to a commission for a partition, but only to a conveyance in pursuance of the parol partition. *Whaley* v. *Dawson*, 2 Sch. & Lef. 367.

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Powers in settlement of undivided shares.

A *settlement of undivided shares* of freehold, leasehold, or copyhold lands, should always contain, as well as the usual powers of sale and exchange, a *power to make a partition;* and it should enable the trustees to raise any money which may be payable, for equality of partition, by sale or mortgage of the property; and that if money should be received by way of equality, the power should authorize the trustees to lay it out in the purchase of lands, &c. to be settled to the same uses. [See form of a power *in a will* to concur in making partition, 1 Jarm. Pow. Dev. 693.]

Power of sale not executed by partition.

A power of sale is not well executed by a mere partition. *M'Queen* v. *Farquhar*, 11 Ves. 467.

It is *vexata quæstio*, whether a power of exchange in the usual form authorizes a partition.

Where the power was "to make sale of, and to convey, surrender, and assure to, or convey in exchange, for or in lieu of *other* manors, lands, and hereditaments, the said undivided third part of all or any of the said freehold and copyhold lands, to any person, either together or in parcels, for the best price, &c. in money, or *such other equivalent interest* in manors, lands, and hereditaments," as should to the trustees seem proper, the Lords Commissioners inclined to think, and afterwards Lord *Ross-*

Lyn determined, that the power authorized a partition; *Abel* v. *Heathcote*, 4 Bro. C. C. 278; 2 Ves. Jun. 98, *S. C.*; Mr. Fearne thought the power authorized a partition, on the ground that the partition was in *effect* an exchange. Sug. Pow. 467, 2d ed.

PARTITION BY CONVEYANCE, &c.

In *M'Queen* v. *Farquhar*, 11 Ves. Jun. 473, Lord *Eldon*, on the first hearing, said, "according to the reason appearing to be given by the Lords Commissioners, one [*qu.* a] power of sale will exclude [*qu.* include] every other power of exchange, partition, &c. It is clear, the converse would not hold. A power to make partition would not include a power to sell, and I think a power of exchanging would not:" on the second hearing, he *doubted* whether a power to exchange is well executed by a partition. *Id.* 476.

In the *Attorney-General* v. *Hamilton*, 1 Madd. Rep. 214, Sir *Thomas Plumer* inclined to Lord *Eldon's* opinion, and doubted whether a power "to sell or convey in exchange," authorised a partition. Lord *Eldon*, 11 Ves. 475, says, "that on a conveyance to uses, with a power to alter the uses by an instrument, the terms and limitations of which are prescribed by the general law, the new use will not arise except under the very circumstances in which it is contracted that it shall arise."

Upon the whole, it seems, *Abel* v. *Heathcote* cannot be supported either under the power of sale, exchange, or the particular wording of the power; at least, it is a very doubtful authority: but the question, whether a *power of exchange* can be executed by a partition, still remains untouched by actual decision. By attending to the reasoning of Lord *Eldon* in *M'Queen* v. *Farquhar*, 11 Ves. 467, there seems to be little doubt, that, whenever the point calls for a decision, it must be determined that it cannot be so executed. *Et vide* Sug. Pow. 2d ed. 468, 3d ed. 474; Eden's note, 4 Bro. C. C. 285.

It seems, a power to exchange does not authorize a partition.

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Lord *Rosslyn*, 2 Ves. Jun. 101; 4 Bro. C. C. 285, *Abel* v. *Heathcote*, says, "If any person had been ingenious enough to think of this objection at the time of the partition, by making the trustees sell, receive the money, and buy a third of the same estate, the whole would have been within the words of the power. They revoked the uses in order to acquire a divided third of the estate, which they have taken in lieu of the undivided part. They might have taken money, rent, or land, any where else." Yet this fictitious proceeding would be against the rule, that no act can be done by circuity which cannot be done directly.

The general Inclosure Act, 41 Geo. III. c. 109, s. 16, after reciting that "it may happen, that some of the proprietors of messuages, cottages, tenements, or lands, in any such parish or manor, and persons entitled to allotment or allotments, to be made by virtue of any such act, may be seised thereof or entitled thereto in joint tenancy, or as coparceners, or tenants in common, and cannot, by reason of infancy, settlement, or absence beyond seas, make an effectual division thereof;" enacts, "that it shall

Commissioners under inclosure acts, may make partition between joint-tenants, or tenants in common, in certain cases.

PARTITION BY CONVEYANCE, &c.

be lawful for any such commissioner or commissioners, and he or they is and are hereby authorized and empowered (upon the request in writing of such joint tenants, or coparceners, or tenants in common, *or any* or *either of them*, or of the husbands, guardians, trustees, committees, or attornies of such as are under coverture, minors, lunatics, or under any other incapacity as aforesaid, or absent beyond seas) to make partition and division of the messuages, cottages, tenements, lands, and allotment or allotments, to such of the said owners or proprietors, who shall be entitled to the same as joint tenants, coparceners, or tenants in common, and to allot the same accordingly to such owners and proprietors in severalty; and from and immediately after the said allotments shall be so made and declared, the same shall be holden and enjoyed by the person or persons to whom the same shall be allotted in severalty, in such and the same manner, and subject to such and the same uses, as the undivided parts or shares of such estates would have been held, in case such partition and division had not been made."

Conveyances to uses seem the best mode to effect a partition of freehold or inheritance.

To effect a partition of estates of *freehold or inheritance*, whether in possession, or in remainder or reversion, the best method, because the operation and effect of the lease and release are so well understood, seems to be for all the joint-tenants, tenants in common, coparceners, or heirs in gavel-kind, to convey by lease and release, the particular *part allotted to each by a separate deed to a trustee, [*or rather*, releasee, *Ed.*] to the use of the particular person, or to uses to prevent dower. The trustee, [releasee] is a mere conduit pipe, and there is no need of his joining in any future conveyances; the uses are fed by his seisin, and are executed immediately into legal estates by the statute of uses: or, in more simple terms, the possession of the releasee is drawn to and drowned in the uses by virtue of the statute.

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It may be made by one lease and release.

Another method is, for all of them to convey the entirety to a trustee [releasee], by lease and release, and by the release to limit the several particular parts allotted to each, to his use or to uses to prevent dower. In this case, the conveyance must necessarily be rather long, and there should be as many parts of the lease and release as there are partitioners, or at least each should have an attested or other copy of the lease and release, and they should take a covenant for production of the originals by the person who keeps them; or otherwise, the deeds should be acknowledged by *all* the partitioners, and enrolled; because a copy of the enrolment is not evidence of a bargain and sale for years, or of the contents of any other deed enrolled for safe custody, except as against the party acknowledging the deed; though, against such party, and against all claiming under him, a copy of the enrolment of any deed is admissible in evidence. An examined copy of the enrolment of a bargain and sale of *freehold* in lands and hereditaments, is as good evidence as the original itself. 27 Hen. VIII. c. 16; 10 Anne, c. 18, s. 3. See 14 East, 231; *Hobhouse* v. *Ha-*

Deeds acknowledged and enrolled, when evidence.

PARTITION BY CONVEYANCE, &c.

milton, 1 Scho. & Lef. 207; Phillips' Evid. 499, 4th ed.; Gilb. Evid. 87, Sedgw. ed.; Bull. N. P. 256. A bargain and sale would be improper, where the uses of all the lands are declared by one deed from a joint operative part by the whole of the partitioners, because a man cannot sell to himself; which each party would do in that case, to the extent of his proportionate part in the share allotted to him: besides, uses cannot be declared on a bargain and sale, because a use cannot be raised on a use; and a bargain and sale itself only transfers a use to be executed into legal estate by enrolment, provided it be done within six lunar months from the date. Gilb. Uses, 99. 295. And therefore any uses declared in the deed on the seisin of the bargainee would be mere trusts, which would also be the case if the release above mentioned were enrolled in order to be pleaded and used as a bargain and sale.

Partition cannot be made by one bargain and sale.

Wives of joint-tenants are not dowable.

The wives of joint-tenants are not dowable, because their husbands have not a sole seisin. Litt. s. 45; Co. Litt. 37 b; Hargr. n. Co. Litt. 35 a, (1); Gilb. Uses, 404; 1 Roll. Abr. 676, (G), pl. 4. For the same reason, if a husband joint-tenant make a feoffment or other convey*ance of his part to a stranger, his wife will not be dowable of it. F. N. B. 150, K; Co Litt. 31 b, *et* n. (4). Yet if the husband, on a partition, acquire a sole seisin of the *legal* estate of freehold and inheritance in his part, his wife will become dowable of it: to avoid which, the allotment should be limited to uses to prevent dower. But if the husband's estate in severalty be only an *equitable* or trust estate, as on an agreement for a partition, the wife will not be dowable, because a modern trust is the same as a use at common law, of which it appears, from the recital in the statute of *uses*, 27 Hen. VIII, c. 10, and the old books, that a widow was not dowable. Perk. s. 349; Dyer, 266 a, pl. 6; 4 Rep. 1 b; 3 P. Wms. 234; 1 Eden, 196. Yet a husband is allowed curtesy of a trust, contrary to the common law, Perk. s. 457; [and this though the property be limited to the wife's separate use during the coverture, *Morgan* v. *Morgan*, 5 Madd. 408.] *Vide* as to dower and curtesy, 2 Bla. Com. 132, 337, Christ. ed.; Co. Litt. 208 a, (1) Butl. n.; 2 Pow. Mortg. 718, 4th ed.; 2 Fonbl. Treat. Equity, 99, 5th ed. Bk. 2, ch. 4, s. 1; 2 Watk. Cop. 79; Sug. n. Gilb. Uses, 25, (4); 1 Cru. Dig. 488; 3 Cru. Dig. 446, 450, 460. *Burgess* v. *Wheate*, Bla. Rep. 121; 1 Eden, 177, *S. C.*; 1 Rop. Husb. and Wife, 352; Noy's Max. 94, 9th ed.

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Curtesy but not dower of a trust.

Wives of tenants in common, coparceners, and heirs in gavel-kind, are dowable.

The wives of tenants in common, Litt. s. 45, coparceners, 2 Cru. Dig. 520, and heirs in gavel-kind, Co. Litt. 33 b, 111 a; Robinson's Gavel-kind, 159, 2d ed., are dowable of the shares of their husbands. On a fair and equal partition made by the husband of a tenant in common, coparcener, or heir in gavel-kind, his wife would only be dowable of the part received on partition; yet an unequal partition would be voidable *quoad* her dower. To prevent this question, it is advisable for the husband and wife to levy a fine of their part, or if it be an estate tail, to suffer a recovery. Sometimes, when a fine or recovery is necessary for any

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part of the lands, the whole of the partitioners and their wives join in a fine or recovery of the whole of the lands. A deed to lead, or a declaration of, the uses of the fine, may be made either by one deed as to the whole, or as to the particular part of each by a separate deed: a lease and release would not be at all necessary, because the fine alone is a conveyance, though some persons in such a case make a lease and release, and declare the uses by the release (*a*). The tenant to the *præcipe* for suffering a common recovery, may, as in other instances, be made either by fine, feoffment, lease and release, bargain and sale enrolled within six months, whether before or after the recovery, or by grant, if there be a previous estate for years subsisting; 5 Cru. Dig. 352, 2d ed.; Cru. Recov. 64, 2d ed.; but on a partition, a bargain and sale enrolled is preferable. A husband seised jointly with his wife, or by moieties or entireties, or seised only
[*202] in right of his wife, *may make the tenant to the *præcipe* of a legal or equitable recovery of the lands, without his wife joining; *Hollet* v. *Sanders*, 3 Lev. 108; *Robinson* v. *Comyns*, Cas. Temp. Talb. 167; Pig. Recov. 72; 5 Cru. Dig. 355; Cru. Recov. 52, 2d ed.; 1 Cas. & Opin. 436; 2 *Ib.* 132; Butl. n. Co. Litt. 325 b, (2); but the wife or her heirs will not be bound unless she be vouched. Where lands are settled to the *separate use* of the wife, she alone may make the tenant; though it is more usual in that case for the husband to join, as in *Burnaby* v. *Griffen*, 3 Ves. 267, 271, 275.

Assignment of attendant terms on partition.

Where there is an attendant term of the lands, it may be assigned by the direction of all the parties, by separate deeds to separate trustees, as to, for, and concerning the part allotted to each *in trust* for him &c. according to the uses of the separate conveyance in fee to him. Or it may be wholly assigned by one deed, with separate declarations of the trust, as above; or, when the property is of small value, a general declaration, according to the uses, trusts, estates, and interests, declared, &c. by the conveyance in fee of the whole. In either case, the above observations, as to one deed or separate deeds, copies and enrolment, equally apply. See a Form, *infra*.

Partition of copyholds should be with lord's consent.

It is said, that parceners of *copyhold* cannot make partition without the lord's license. Hal. MS. Co. Litt. 59 a, (1); but at the end of Calthorpe's Read. 98, it is said, that it was agreed in the Duchy Chamber, that if two joint-tenants, copyholders in fee, make partition, it is good, and no forfeiture nor alienation. 2 Watk. Cop. [194] (e).

However, an *agreement* to divide copyhold lands will not operate as a partition, and cannot be enforced in a Court of Equity, if it be made without the privity of the lord; not can a defendant claiming under an entail of a copyhold, be compelled to substantiate such an agreement by a preceding tenant in tail. *Oakley* v. *Smith*, Ambl. 368; 1 Eden, 261. 1 Madd. Ch. 248, 2d ed.

The proper mode of perfecting a partition of copyholds, is a surren-

[(*a*) As to this, *vide post*, Vol. 4, p. 181, n].

der, and admission thereupon, which of course is with the consent of the lord. When the parties are tenants in tail, the customary mode of barring the entail should be followed, as by a customary recovery, or a surrender.

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[It should be observed, that Equity will interfere, (as in other cases), to correct mistakes made by parties in dividing lands. Thus, in a late case, where a partition had been made between tenants in common by surveyors appointed by them, and, eleven years afterwards, when sales had been made by the several partitioners, it was discovered that a piece of ground, which had been allotted to one of the parties, belonged, before the partition, exclusively to him; the Court, on a bill filed by him against one of the tenants in common, who had refused to concur with the others in making compensation, decreed a pecuniary compensation to be made. *Dacre* v. *Gorges*, 2 Sim. & Stu. 454.]

Equity will relieve in case of mistake.

II. By Writ of Partition.

PARTITION BY WRIT.

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Partition may be effected by a *partitione*† *facienda*, which is a writ *of partition, to compel those who hold lands in common, *insimul et pro indiviso* [jointly and undividedly], to divide the lands in severalty by metes and bounds, as coparceners and heirs in gavel-kind at the common law; Bract. 71 b; Litt. s. 247. 265; Fitzherbert's N. B. 62; Robinson's Gavelkind, 105, 2d ed.; Cowel, *Partition*; joint-tenants and tenants in common of an estate or estates of inheritance, in their own right, or in the right of their wives, of any manors, lands, tenements or hereditaments, within England, Wales, or the marches of the same; and every of the said joint tenants, or tenants in common, and their *heirs*, after such partition made [by writ], shall have aid of the other or of their *heirs*, to the intent to dereign the warranty paramount, and to recover for the rate [*pro ratâ*, Co. Litt. 174 a], as is used between coparceners after partition, made by the order of the common law, by the statute 31 Hen. VIII. c. 1:—joint-tenants, and tenants in common, who hold jointly or in common for term of life, year or years, or joint tenants or tenants in common, where one or some of them have estate or estates for term of life or years, with the other who have estate or estates of inheritance or freehold in any manors, lands, tenements or hereditaments, by the statute 32 Hen. VIII. c. 32; but, aid and recovery *pro ratâ*, are not mentioned in the latter statute.

For whom it lies.

It lies by one coparcener against another, or by one against three, or two against two, if there be four, and so against all the others who will not consent, by those who do consent. Litt. s. 247. It does not lie *for* tenant by the curtesy. Reg. 76 b. *Tenet* always implies a tenant of the freehold; and therefore if one of the coparceners make a lease for life, it cannot be brought against him for that land; because in that case, they do not hold *insimul et pro indiviso*, and then the writ must be against the tenant

By whom.

† It is called *participatione* in the 31 Hen. VIII. c. 1, s. 2, by mistake, and therefore *partitione* is understood.

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of the freehold. 4 Hen. VII. 9; Co. Litt. 167. It lies *against* tenant by the curtesy; but to have it perpetual he must pray in aid of the heir in reversion. Reg. 76 b; Booth's Real Actions, 244; *Vide* 3 Bac. Abr. 699; *Joint-tenants*, &c. (I) 7.

Process.

The process in this action, is summons, attachment, and distress infinite;

Aid.

F. N. B. 62, M. Aid lies in this action, which may be counterpleaded, and if it be found against the defendant, it is peremptory, *quod partitio*, &c.; Booth's Real Actions, 245; *contra* as to aid, 1 Roll. Abr. 162,

Essoins.

Aid (A) pl. 28, 29. The tenants may have several essoins, every one, one essoin, as in other real actions, though no land be demanded. Hob. 8; Booth, 245; 16 Viner, Abr. *Partition*, (R) 232. *Vide* Com. Dig. *Pleader*, (3 F).

First judgment.

There are two judgments: the first, that the partition shall be made, viz. *quod partitio fiat inter partes prædictas de tenementis prædictis cum pertinentiis;*

Inquisition.

and upon this there goes out a judicial writ to the *sheriff, to make

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partition; which recites first, the writ of partition and judgment, and then commands the sheriff, together with twelve men of the vicinage, &c. to go in person to the lands to be divided, and there, in presence of the parties, if they appear on summons to be made, by the oaths of those twelve men, to make an equal and fair partition, and allot to each party their full and just share, and then return the inquisition of the partition annexed to the writ, under the seals of the sheriff and the jurors; whose names are likewise to be returned; Booth's Real Act. 244; Lit. s. 248; 2 Cru. Dig. 507, 2d ed.

Second judgment.

When the inquisition is thus returned, on motion made to the Court, the second judgment is given in this manner:—*Ideo consideratum est per curiam quod partitio prædicta firma et stabilis in perpetuum teneatur, &c.* Co. Litt. 169 a; 1 Bac. Abr. 699.

In a writ of partition, if the judgment be given *quod partitio fiat*, and thereupon a writ is directed to the sheriff to make partition, no writ of error lies, because the judgment is not complete till the sheriff's return, and the second judgment, which the law requires; for, before that, the plaintiff may be nonsuited; or he may, upon the return of the sheriff, suggest to the Court that the partition is not equal, and so have a new partition; and may also release before the last judgment. *Berkeley* v. *Warwick*, Cro. Eliz. 635.

If, after awarding the judicial writ, and before the return of it, the defendant dies, yet the partition is good, and the writ shall not abate; because, before the death of the defendant, judgment ought to be given that partition should be made; and though, upon the return of the judicial writ, there is another judgment given, yet that is in confirmation of the first judgment. It seems likewise, that, upon the return of the judicial writ, no exception can be taken to it; therefore it is not material, whether the defendant be dead or alive then, since he can have no advantage by any plea on the return of the writ. Cro. Eliz. 636; Dal. 59.

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If the writ be brought by one joint-tenant against several, and there happen to be error in the execution of it, and one of the defendants releases all errors to the plaintiff, this shall not bar the others; for each having a distinct interest, shall not be prejudiced by the release of his companion. *Yate* v. *Windham*, Cro. Eliz. 64.

In this writ of partition may be demanded the view of frank-pledge, together with a manor, for though it be not severable of itself, nor partible, yet the profits thereof may be divided, or it may be divided thus: that the one shall have it at one time, and the other at another; also, being demanded within the manor, it may be entirely allotted to one, and the land in recompence to another. *Moor* v. *Onslow*, Cro. Eliz. 759; 2 Cru. Dig. 508, 2d ed.

Stat. 8 & 9 W. 3, c. 31; 3 & 4 Ann. c. 18.

*The statute 8 & 9 Will. III. c. 31†, made perpetual by the statute 3 & 4 Ann. c. 18, s. 2, after reciting that 'the proceedings upon writs of partition between coparceners by the common law or custom, joint-tenants, and tenants in common, are found by experience to be tedious, chargeable, and oftentimes ineffectual, by reason of the difficulty of discovering the persons and estates of the tenants of the manors, messuages, lands, tenements, and hereditaments, to be divided; and the defective or dilatory executing and returning of the process of summons, attachment, and distress, and other impediments, in making and establishing of partitions; by reason of which, divers persons having undivided parts, or purparts, are greatly oppressed and prejudiced, and the premises are frequently wasted and destroyed, or lie uncultivated and unmanured, so that the profits of the same are totally, or in a great measure lost; for remedy whereof' enacts, "That after process of *pone*, or attachment returned upon a writ of partition, affidavit being made by any credible person, of due notice given of the said writ of partition, to the tenant or tenants to the action, and a copy thereof left with the occupier or tenant or tenants, or if they cannot be found, to the wife, son, or daughter, being of the age of one-and-twenty years, or upwards, of the tenant or tenants, or to the tenant in actual possession, by virtue of any estate of freehold, or for term of years, or uncertain interest, or at will, of the manors, &c., whereof the partition is demanded, (unless the said tenant in actual possession be demandant in the action), at least forty days before the day of return of the said *pone*, or attachment; if the tenant or tenants to such writ, or any of them, or the true tenant to the messuages, &c. as aforesaid, shall not, in such case, within fifteen days after return of such writ of *pone*, or attachment,

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After process of *pone*, or attachment returned.

If tenant do not enter appearance within fifteen days, Court

† There is a similar act passed by the legislature of the Island of *Antigua*, 50 Geo. III., No. 621, intitled "An Act for the easier obtaining Partition of Lands and Slaves in Coparcenary, Joint Tenancy, and Tenancy in Common." *Laws of Antigua*, Vol. 3, 201, *edit.* 1818.

PARTITION BY WRIT.

may proceed to examine defendant's title, give judgment by default, and award writ to make partition.

cause an appearance to be entered, in such Court where such writ of *pone* or attachment shall be returnable; then in default of such appearance, the demandant having entered his declaration, the Court may proceed to examine the demandant's title, and quantity of his part, and purpart, and accordingly as they shall find his right part and purpart to be, they shall for so much give judgment by default, and award a writ to make partition, whereby such proportion, part, and purpart, may be set out severally; which writ being executed, after eight days' notice given to the occupier or tenant, or tenants of the premises, and returned, and thereupon final judgment entered, the same shall be good, and conclude all persons whatsoever, after notice as aforesaid, whatever right or title they have or may at any time claim to have in any of the manors, &c. mentioned in the said judgment and writ of partition; al-

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*though all persons concerned are not named in any of the proceedings, nor the title of the tenants truly set forth."

If tenant or other shall in one year after judgment entered, or in case of infancy, &c. shew good matter in bar of such partition, &c. Court may set aside judgment.

Sect. 2. "That if such tenant or person concerned, or either of them, against whom, or their right or title, such judgment by default is given, shall within the space of one year after the first judgment entered, or in case of infancy, coverture, *non sanæ memoriæ*, or absence out of the kingdom, within one year after his, her, or their return, or the determination of such inability, apply themselves to the court by motion where such judgment is entered, and shew a good and probable matter in bar of such partition, or that the demandant hath not title to so much as he hath recovered; then, in such case, the Court may suspend or set aside such judgment, and admit the tenant and tenants to appear and plead, and the cause shall proceed according to due course of law, as if no such judgment had been given; and if the Court upon hearing thereof, shall adjudge for the first demandant, then the said first judgment shall stand confirmed, and be good against all persons whatsoever, except such other persons as shall be absent or disabled as aforesaid;

Person appealing to pay costs.

and the person or persons so appealing shall be awarded thereupon to pay costs; or if within such time or times aforesaid, the tenants or persons concerned, admitting the demandant's title, parts, and purparts, shall shew to the Court an inequality in the partition, the Court may award a new partition to be made, in presence of all parties concerned, (if they will appear), notwithstanding the return, and filing upon record the former; which said second partition, returned and filed, shall be good and firm for ever, against all persons whatsoever, except as before excepted."

No plea in abatement to be admitted.

Sect. 3. "That no plea in abatement shall be admitted or received, in any suit for partition, nor shall the same be abated by reason of the death of any tenant."

Where high sheriff cannot

Sect. 4. "That when the high sheriff, by reason of distance, infirmity, or any other hindrance, cannot conveniently be present at the exe-

cution of any judgment in partition, in such case the under sheriff, in presence of two justices of the peace of the county where the lands, tenements or hereditaments to be divided do lie, shall and may proceed to execution of any writ of partition, by inquisition in due form of law, as if the high sheriff were then personally present; and the high sheriff thereupon shall, and is hereby enabled and required to make the same return as if he were personally present at such execution. And in case such partition be made, returned and filed, he or they that were tenant or tenants of any of the said messuages, &c. or any part or purpart thereof, before they were divide , shall be tenant or tenants for such * part, set out severally to the respective landlords or owners thereof, by and under the same conditions, rents, covenants and reservations, where they are or shall be so divided; and the landlords and owners of the several parts and purparts, so divided and allotted as aforesaid, shall warrant and make good unto the respective tenants, the said several parts severally, after such partition, as they are or were bound to do, by any copy, leases, or grants, of their respective parts, before any partition made. And in case any demandant be tenant in actual possession to the tenant to the action, for his part and proportion, or any part thereof, in the messuages, &c. to be divided by virtue of a writ of partition as aforesaid, for any term of life, lives, or years, or uncertain interest, the said tenant shall stand and be possessed of the said purparts and proportions for the like term, and under the same conditions and covenants, when it is set out severally, in pursuance of this or any other act, statute, or law to that purpose."

PARTITION BY WRIT.

be present at execution of judgment, under sheriff, in presence of two justices, may proceed thereupon.

Tenants before the division, to conditions, &c. and landlords to make good to tenants their parts, as before partition.

Proceedings on default of tenant.

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In a *writ* of *partition*, a rule to shew cause was granted, and afterwards made absolute, on affidavit of service, for the Court to proceed to examine the title of the demandant; process having been duly returned, the declaration entered, and no appearance entered by the tenant within fifteen days: the Court, on making the rule absolute, appointed to proceed on the examination in open Court on the next day. Accordingly, Serj. *Walker*, for the demandant, opened his title, of which abstracts had previously been left with the judges; it fortunately proved not to be very intricate. The several seisins, descents, devises, and conveyances, were proved by *affidavits*. The deeds and wills were *produced* and read; and no counsel appearing for the tenant, the Earl of Thanet, judgment on his default was given for the demandant, to hold in *severalty* the premises demanded in his count; in some of which he was seised of two undivided third parts, and in others of a moiety only, in common with Lord Thanet. And a writ of partition was awarded. In a subsequent term, the sheriff returned that he had executed the same, in the presence of persons who attended for the plaintiff and defendant respectively; and specified in his return the several parcels, with their metes and boundaries: hereupon, *Walker*, for the plaintiff, moved for final judgment, *quod*

Proceedings on default of tenant.
Case of *Halton* v. *Thanet*.

PARTITION BY WRIT.

partitio sit stabilis. The rule for which was made absolute the last day of the term, on affidavit of notice to the defendant and the tenants in possession. *Halton* v. *Thanet*, 2 Wm. Bla. Rep. 1134, 1159, Elsley's ed.

It has been lately held, that the statute 8 & 9 Will. III. c. 31, applies only to those cases where the tenant does not appear. *Dyer* v. *Bullock*, 1 Bos. & Pul. 344.

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Statutes enforcing partition, do not extend to copyholds.

The statutes enforcing partition, do not extend to *copyholds*, be*cause this alteration of the tenure might prejudice the lord, without his consent; and because these acts provide, that it shall be done by writ of partition: and copyhold lands are not impleadable at common law; Co. Copyh. s. 54, Tracts, 125; Gilb. Ten. 185; 6 Vin. Abr. 171, pl. 19; nor are *customary* estates within those statutes. *Burrell* v. *Dodd*, 3 Bos. & Pul. 378.

Notwithstanding the Courts of common law are now rarely resorted to for obtaining a partition of estates, yet, as a rule of Courts of equity is—*æquitas sequitur legem*, it has been thought proper, on that account, to state, at some length, the leading points of the proceedings at law, in order to give a more complete view of the whole subject.

PARTITION BY BILL IN EQUITY

III. By Bill in Equity.

Advantages of equitable jurisdiction.

It has been shewn that remedy may be obtained in the Courts of common law for the partition of estates; yet they have a difficulty of proceeding to the full extent of justice; and, if the titles of the parties are in any degree complicated, it is extremely difficult to proceed in those Courts; and, where the tenants in possession are seised of particular estates only, the persons entitled in remainder cannot be bound by the judgment in a writ of partition. Mitford's (now Lord Redesdale's) Pleadings, 2d ed. 110. On these considerations, and the almost constant necessity the parties have for a *discovery*, is founded this branch of EQUITABLE JURISDICTION; in the exercise of which, Courts of Equity are constantly governed by an anxious attention to the legal title of the plaintiff: for though, at law, it be sufficient to allege seisin, yet, in equity, the plaintiff must shew his title. *Cartwright* v. *Pulteney*, 2 Atk. 380. But the title may be defeasible. *Wills* v. *Slade*, 6 Ves. 498; 1 Fonbl. Treat. Equity, 21, 5th ed. The commission issued by a Court of equity is much more convenient than the writ; the valuation of the proportions is much more considered; the interests of all the parties are much better attended to; and it is a work carried on for the common benefit of both. *Calmady* v. *Calmady*, 2 Ves. Jun. 570.

A Court of Equity issues a commission of partition, on account of the extreme difficulty attending the process of partition at law, where the plaintiff must prove his title as he declares, and also the titles of the defendants; and judgment is given for partition according to the respective

titles so proved. Which is attended with so much difficulty, that by analogy to the jurisdiction of a Court of Equity, in the case of *dower*, a partition may be obtained by bill. *Agar* v. *Fairfax*, 17 Ves. 552; 2 Madd. Chan. 244, 2d ed.

PARTITION BY BILL IN EQUITY

It is a thing of constant occurrence for joint-tenants, tenants in com-*mon, coparceners, or heirs in gavel-kind, to file a bill in the Court of Chancery, praying for a partition of the estate; in which case it is usual for the Court to issue a commission for that purpose, to certain persons, who proceed to divide the estate without a jury, and make their return to the Court. If not objected to by any of the parties, the Court will decree the performance of such partition, and direct the parties to execute proper conveyances to each other of the shares allotted to them. 2 Cru. Dig. 512, 2d ed.; Hargr. n. Co. Litt. 169 a, (2). Redesdale's Pleadings, 97, 3d ed.

Equity makes partition by commissioners.

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The jurisdiction in these cases is not exercised under the authority of any act of Parliament. *Agar* v. *Fairfax*, 17 Ves. Jun. 552, but appears to have arisen in *consequence* of the act of the 32 Hen. VIII., which makes one tenant in common accountable to the other; so that since the statute, they are become, in a manner, trustees the one to the other. So said in argument, 1 Vern. 421.

Origin of equitable jurisdiction.

Mr. Hargrave, in a note to Co. Litt. 169 a, (2), after having stated with his usual clearness and elegant precision, the different modes of partition in our own law, and made references to works on the subject in the English, Civil, and Scotch laws, with which the English lawyer would do well to be acquainted, says, "how far this branch of equitable jurisdiction so trenching upon the writ of partition, and wresting from a Court of common law its ancient exclusive jurisdiction over this subject, might be traced by examining the records of Chancery, I know not. But the earliest instance of a bill of partition I observe to be noticed in the printed books, is a case of the 40 Eliz. in Tothill's Transactions in Chancery, title *Partition* (155, ed. 1820). According to the short report of this case, the Court interposed from necessity, in respect of the minority of one of the parties, the book expressing, that on that account he could not be made party to a writ of partition; which reason seems very inaccurate; for, if Lord *Coke* is right, that writ doth lie against an infant, and he shall have his age in it, and after judgment he is bound by the partition. Co. Litt. 171 b." But probably, in Lord *Coke's* time this was a rare, and rather unsettled mode of compelling partition; for I observe in a case in Chancery of the 6 Cha. I., which was referred to the judges, on a point of law between two coparceners, that the judges certified for issuing a *writ of partition* between them, and that the Court ordered one accordingly, which I presume would scarce have been done, if the decree for partition, and a commission to make it, had then been a current and familiar proceeding with Chancery; 1 Cha. Rep. 49. How.

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ever, it appears by the language of the Court in a very important cause, in which the grand question was, whe*ther the Lord Chancellor here could hold plea of a trust of lands in Ireland, that in the reign of James the Second bills of partition were become common." 1 Vern. 421; 2 Cha. Cas. 189.

Mr. Fonblanque does not appear quite satisfied with Mr. Hargrave's observations, and has a note on this subject. 1 Treat. Equity, 18, 5th ed.

In the 14 Car. II, *Martyn* v. *Perryman*, Chan. Rep. 235, a partition was decreed, notwithstanding *femes covert* and infants, as well as incumbrancers, were concerned. In the reign of James II. they were become frequent; 1 Vern. 421; 2 Cha. Ca. 189; and in that of his successors *William* and *Mary*, the Chancellor observed, "he did no more question the jurisdiction of the Chancellor in these cases, than he did whether a gift to a man and his heirs were a fee-simple." *Manaton* v. *Squire*, 2 Freem. 26; Madd. Ch. 244, 2d ed.

Quære whether equitable partition be matter of right.

It has been said, that a decree for a partition is a matter of *right*, and that there is no instance of not succeeding in it, except where no proof is adduced of a title in the plaintiff. *Parker* v. *Gerard*, Ambl. 236; 1 Ves. & Bea. 554, and *vide* Supp. Vin. Abr. 5 Vol. 338. On the other hand, it has been observed, that as a plaintiff has a legal title, it is *discretionary* in the Court, whether they will grant a partition or not; and where there are suspicious circumstances in the plaintiff's title, the Court will leave the party to law. *Cartwright* v. *Pulteney*, 2 Atk. 380; and see *Scott* and *Fawcett*, 1 Dick. 299, and *Baring* v. *Nash*, 1 Ves. & Bea. 556-7. The plaintiff must, it appears, state upon the record his own title to a share, *Cartwright* v. *Pulteney*, 2 Atk. 380, and the titles of the defendants; and the better to enable the plaintiff to obtain a judgment for partition, the Court will direct inquiries to ascertain who are with him entitled to the property. *Agar* v. *Fairfax*, 17 Ves. 552; *Calmady* v. *Calmady*, 2 Ves. Jun. 570.

Every part of the estate need not be divided.

On a partition *every part* of the estate need not be divided. If there be three houses, it would not be right to divide each house, for that would be to spoil them; but some recompense is to be made, either by a sum of money, or rent, for equality of partition, to those who have the houses of the least value. Earl of *Clarendon* v. *Hornby*, 1 P. Wms. 446; 2 Cru. Dig. 539, 2d ed. But, if there be but *one* house, there may be a decree for the *partition* of it, though it would be highly inconvenient to the parties. *Turner* v. *Morgan*, 11 Ves. 143, and see 1 P. Wms. 447; and where exceptions were taken to the report of commissioners, for the partition of a house among joint-tenants, one party complaining that she could not get to her division except by going up stairs, which stairs were allotted to another person, the Chancellor would not interfere.

[*211] **Anon.* MS. And where the bill was for a partition of a *cold bath*, it was decreed. *Warner* v. *Baynes*, Ambl. 589; *S. C.*, alluded to in *Parker* v.

PARTITION BY BILL IN EQUITY.

Gerard, Ambl. 236. So it is, if there be but one *mill*, or an *advowson*, to be divided; (as to partitions of an advowson, see *Bodicoate* v. *Steers*, 1 Dick. 69; *Matthews* v. Bishop of *Bath and Wells*, 2 Dick. 652); but it is different where there are other lands, which may make up the share. *Turner* v. *Morgan*, 11 Ves. 143; and see 1 P. Wms. 447. A partition was decreed between tenants in common of a *waste*, though great inconvenience might ensue, as the want of pasture, shade, &c. *Manaton* v. *Squire*, 2 Ch. Cas. 237.

Partition decreed though persons not *in esse* may become entitled.

It is no objection to a *partition*, that other persons may come *in esse* and be entitled: otherwise, in every case where there is a settled estate, with remainders to persons who may come *in esse*, there never could be a partition. *Wills* v. *Slade*, 6 Ves. 498. [But the Court must have before it the legal title; *Miller* v. *Warmington*, 1 Jac. & Walk. 493; and all persons necessary to make a conveyance. *Anon.* 3 Swans. 139, n.]

Who may file bill.

An infant tenant in common, or joint-tenant, may file a bill for partition, or such a bill may be filed against him; *Tuckfield* v. *Buller*, Ambl. 197, *S. C.* 1 Dick. 240; and it will be decreed.

A bill for a partition may be sustained on behalf of a joint-tenant of a *lease for years*; nor in such case is the reversioner a necessary party. *Baring* v. *Nash*, 1 Ves. & Bea. 551. And a bill for a partition of *tithes* will lie. *Baxter* v. *Knollys*, 1 Ves. Sen. 495. But the Court has no jurisdiction to grant a commission of partition between tenants in common of a *copyhold*; *Scott* v. *Fawcett*, 1 Dick. 299; the statutes relating to partition not applying to copyholds. See Gilb. Ten. 185; Co. Cops. s. 54, Tracts, 125; Cro. Car. 44; *Burrell* v. *Dodd*, 3 Bos. & Pull. 378; *Oakley* v. *Smith*, 1 Eden, 261. It is the same as to *joint-tenants* of a copyhold, and also as to *coparceners*. See Hale's MS. n. Co. Litt. 59 a (1); *vide* 2 Watk. Cop. [194] (*e*); Calthorpe's Reading, 98.

[In a bill for partition, it is not necessary to make a person having a mortgage of the entirety a party. *Swan* v. *Swan*, 8 Price, 518.]

No participation in England for lands in Ireland.

A bill for a partition of lands in *Ireland* cannot be sustained in England, because the Court has no jurisdiction over lands there; and, at common law, no writ of partition lies in England for lands in Ireland. *Cartwright* v. *Pettus*, 2 Ch. Cas. 214; *Carteret* v. *Petty*, Lord Nottingham's MSS.; 2 Swans. 323, *S. C.*

Different returns by commissioners.

Under a commission of partition to four commissioners, and two different returns made; one, by two of the commissioners, and another by the remaining two, the Court cannot act, but will grant another commission directed to *five* commissioners. *Watson* v. Duke of *Northumberland*, 11 Ves. 153, *S. C.* MS.; and see *Corbett* v. *Davenant*, 2 Bro. C. C. 252. In cases of this kind, the proper mode is to move to quash the return. *Ib.*

As to improper conduct, or inequality of division by the commissioners.

[This is the course too, where improper conduct is imputed to the commissioners. See *Jones* v. *Totty*, 1 Simons, 136; where exceptions were made to the return on the ground of inequality in value in the respective

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allotments; and that management had been used to throw upon the exceptant the lot of inferior value: but Sir *J. Leach*, V. C., thought that the charge of management was not made out; and his Honour observed, that with respect to comparative value, as the three commissioners were named by the three several parties, and were therefore judges of their own choice, the principles which applied to arbitrators were applicable to them; and, for that reason, he should have hesitated to suppress the return, *even if he had been satisfied that the commissioners had erred in their judgment as to value.*]

Costs.

With respect to *costs* in cases of partition, it is said to have been determined, that where the plaintiff was entitled to three or four hundred acres, and the defendant to four or five only, and though the defendant would [*212] have rather given up his part than be at the expense of a parti*tion, yet it was decreed, and to be at the *equal* expense of both parties. *Parker* v. *Gerard*, Ambl. 237; and so determined by Lord *Thurlow*, in *Hyde* v. *Hindby*, 2 Cox, 408. This unreasonable doctrine is not now adhered to, the rule now appearing to be, that in these cases no other costs are given, excepting those of issuing, executing, and confirming the commission, which are borne by the parties, in proportion to the *value* of their respective interests; and no costs are allowed of the previous or subsequent proceedings. *Agar* v. *Fairfax*, 17 Ves. 558; *Calmady* v. *Calmady*, 2 Ves. Jun. 568; and see *Metcalf* v. *Beckwith*, 2 P. Wms. 377, 378; *Baring* v. *Nash*, 1 Ves. & Bea. 554; *sed vide* Redesd. Tr. Pl. 98, 3d ed., 111, 2d ed. In *Hyde* v. *Hindly*, 2 Cox, 408, it was held, that where the parties are entitled *unequally*, if the *plaintiff* be entitled to the smaller share, the costs shall be borne equally. This appears perfectly just, as the partition must be presumed to be for his benefit, because it was at his request, and the defendant was forced to submit to it, at a time when perhaps the expense was highly inconvenient.

Commissioners have no lien on commission.

The commissioners have no lien on the commission for their charges, and they cannot insist on payment in the first instance before they return the commission with their certificate. *Young* v. *Sutton*, 2 Ves. & Bea. 366; 1 Madd. Chanc. 250, 2d ed.

Conveyances necessary on partition in equity.

A partition at *law* is perfected by the delivery of possession, in pursuance of the judgment of the court of law, which concludes all the parties to it without any conveyance whatever being made by them. But partition in *equity* proceeds upon CONVEYANCES *to be* executed by the parties; in which case the same conveyances are necessary to confer a legal title as if the parties had agreed to a private partition; and if the parties be not competent to execute the conveyances, the partition cannot be perfected; *Whalley* v. *Dawson*, 2 Sch. & Lefr. 372; and when any of the parties are *femes covert*, or tenants in tail, a fine or recovery will be equally necessary; and if the bill be by or against an infant, the *mutual* conveyances are respited until the infant attains twenty-one; *Tuckfield* v. *Buller*, Ambler,

198; 1 Dickens, 240, *S. C.*; Redesdale's Pleadings, 97, 3d ed.; 2 Cru. Dig. 541, 2d ed.; although the infant, whether plaintiff or defendant, be only *cestui que trust*, and the legal estate capable of being conveyed by the trustees. Lord *Brook* v. Lord and Lady *Hertford*, 2 P. Wms. 519; *Attorney-General* v. *Hamilton*, 1 Madd. Rep. 214. The decree in these cases can only extend to make the partition give possession, and order enjoyment accordingly until effectual conveyances can be made. So, if a contingent remainder, not capable of being barred or destroyed, be limited to a person not in being, the conveyance must be delayed until such person shall come into being, or until the contingency shall be determined; *in either case a supplemental bill would be necessary to carry the decree into execution. An executory devise may occasion a similar embarrassment. Redesd. Tr. Pl. 97, 3d ed. PARTITION BY BILL IN EQUITY. [*213]

The usual course is not for the Court to order who shall be parties to the conveyance, but to leave it to the master to whom it is referred to settle the conveyances. *Attorney-General* v. *Hamilton*, 1 Madd. Rep. 222.

[The Court of Chancery does not, by analogy to the proceedings at law, confine itself to the object of making the partition, but will also direct an account when prayed. *Lorimer* v. *Lorimer*, 5 Madd. 363. In a late case, the Court of Exchequer, referred it to the deputy-remembrancer to take an account of improvements alleged to have been made by the defendant as tenant of the premises sought to be divided, the Court thinking that it ought not to make partition between him and the plaintiff, except upon the terms of those improvements being allowed. *Swan* v. *Swan*, 8 Price, 518.] Equity will decree an account as well as partition.

The interests of *infants* are so far regarded by Courts of equity, in cases of partition, as well as in all other cases, that no decree can be made against an infant, without a day being allowed him to shew cause against the decree after he comes of age; and he is always served with a *subpœna* to shew cause within six months after coming of age, why the decree should not be made absolute; and if he do not appear, the decree is made absolute without entering an appearance. *Wharam* v. *Broughton*, 1 Ves. 183; *Savage* v. *Carrol*, 1 Ball & Beatty, 651; 2 Madd. Ch. 460, 2d ed. Where there is a decree *nisi causâ* against an infant, he may, upon coming of age, and before the decree is made absolute, put in another answer, the answer of his guardian not being binding upon him; *Fountain* v. *Caine* and *Jeffs*, 1 P. Wms. 503; and he may make a defence, and examine witnesses anew. *Napier* v. Lady *Effingham*, 2 P. Wms. 401. But if an infant conceives himself aggrieved by a decree, he is not under a necessity to wait till he comes of age, in order to seek redress, but he ma apply for that purpose as soon as he thinks proper; neither is he bound to proceed by way of rehearing, or bill of review, but may impeach the former decree by an original bill. *Richmond* v. *Tayleur*, 1 P. Wms. 734; *Carew* v. *Johnston*, 2 Sch. & Lefr. 292. Infancy.

PARTITION BY BILL IN EQUITY.

An *infant plaintiff* is, it seems, (unless under extraordinary circumstances, see *Bennet* v. *Lee*, 2 Atk. 530,) as much bound, and as little privileged, as one of full age; Lord *Brook* v. Lord *Hertford*, 2 P. Wms. 519; *Gregory* v. *Molesworth*, 3 Atk. 626; *Windham* v. *Windham*, 2 Freem. 127; 1 Fonbl. Treat. of Equity, 19, 5th ed.; but the Court will take care that the infant does not make any injurious submission by his bill, and will, if necessary, when the cause is brought on, allow him to amend his bill, on paying the costs of the day. *Serle* v. *St. Eloy*, 2 P. Wms. 387. There are, however, cases in which an infant has been allowed to shew cause, when he came of age, against a decree in his own cause, respecting *real* estate; Lady *Effingham* v. Sir *John Napier*, 2 P. Wms. 401, mentioned 3 Atk. 627; but he has been held to be bound by a decree in a cause regarding *personal estate*, wherein he was plaintiff, as much as a person of full age; since it would be most mischievous with regard to personal estate, if an infant, *after being of age, should be allowed by a new bill to dispute any thing done during his minority, as to *maintenance, education*, &c. *Gregory* v. *Molesworth*, 3 Atk. 626; 2 Madd. Ch. 461, 2d ed.

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In cases of partition, if no cause should be shewn after an infant attains twenty-one, or the cause shewn should not be allowed, the decree may be then extended to compel mutual conveyances. Redesdale's Pleadings, 97, 3d ed.

PARTITION BY ACT OF PARLIAMENT.

IV. By Private Act of Parliament.

Instances in which a private act of Parliament is requisite to effectuate a partition.

There are so many difficulties attending partition even by bill in equity, that if it be desirable to gain the legal estate immediately, where there are infants interested who would be entitled to shew cause against the partition at the distance oftentimes of many years; or if the estate be so circumstanced that partition cannot be obtained either at law or in equity, as if the parties interested are lunatics; or the surviving trustee of a settlement with all the requisite powers of completing a partition, or his heir, be a lunatic; or the trustees of an estate in strict settlement have no power by the settlement to make partition, and the parties interested are infants, or only tenants for life, with contingent remainders to persons not ascertained, or not in being; or the trustees have a power to make partition, but have no authority how to apply the money *received* for equality of partition, or how to raise the money to be *paid* for equality of partition; or if there be a power to make partition, with a power to raise the money to be paid for equality of partition, by sale or mortgage of part of the lands in settlement, and the money could be raised with greater ease and benefit to the parties immediately interested and the remainder-men, by a sale of timber, but the tenant for life in possession is restricted from cutting more than a certain quantity annually, or the tenant for life in such a case is subject to impeachment for waste; and in many other in-

stances, as various as the necessities of families, and of which our intricate system of settlements prevents the accomplishment; and in many other cases in which Courts of equity find they have no power to make a partition, unless clogged with such numerous impediments and inconveniences, that the parties would not be desirous of obtaining it; then the only effectual way of proceeding is by a bill in Parliament, which has been for many years a common mode of proceeding to accomplish a partition of estates.

PARTITION BY ACT OF PARLIAMENT.

The private act operates as a conveyance, and transfers an immediate legal estate to the trustees appointed to make the partition, or immediately to the parties themselves, if the property which each is to take has been previously fixed, without any conveyance from the parties. And *infants and other persons under disabilities are by it irrevocably bound.

No conveyance necessary.

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See the dissertation on Private Acts of Parliament; and the form of a Partition by Bill in Parliament, *infra*.

AGREEMENT *for a* PARTITION *of* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises in* POSSESSION, REMAINDER, *or* REVERSION; *where the Part which each is to take in Severalty, has been previously ascertained; and it is referred to Commissioners, or their Umpire, to determine the Sum to be paid for Equality of Partition.* The most simple form.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

ARTICLES OF AGREEMENT indented and made the —— day of ——, 18—, BETWEEN [*first party*], of &c., of the one part; and [*second party*], of &c., of the other part.

Parties.

WHEREAS (*b*) the said [*first party*], and [*second party*],

Recital of seisin in possession.

(*b*) If the premises be leasehold, say,

LEASEHOLD.

" WHEREAS by indenture, bearing date on or about the —— day of ——, 17—, and made between [*lessor*], of

Recital of lease.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

are seised of or entitled to the fee-simple (*c*), in joint-*tenancy, (*or* in common, (*or* in coparcenary) (*d*), in posses-

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&c., of the one part; and [*lessee*], of &c., of the other part; the said [*lessor*] demised and leased unto the said [*lessee*], his executors, administrators, and assigns, *All those* two messuages and gardens, situate at ——, in the county of ——, with the appurtenances, for the term of —— years, commencing from the —— day of ——, 17—, subject to the yearly rent of —— pounds, and to the several covenants and agreements therein contained. AND WHEREAS the said [*lessee*] died intestate in or about the year 18—, and administration of all and singular the goods, chattels, and credits, of the said [*lessee*], was granted to [*wife*], the wife of the said [*first party*], by her then name of [*maiden name*], by the Prerogative Court of the Archbishop of Canterbury on or about the —— day of ——, 18—. AND WHEREAS the said [*wife*], the wife of the said [*first party*], and the said [*second party*], are the only children and next of kin of the said [*lessee*]; and as such the said [*first party*], in right of his said wife, and the said [*second party*], in his (*or* her) own right, are possessed of, or entitled to the said messuages and gardens, with the appurtenances, for the remainder of the said term."

Intestacy of lessee, and grant of administration.

Of parties being entitled as next of kin of lessee.

COPYHOLD.

(*c*) If the premises be copyhold, say,

"according to the custom of the manor of ——, in the county of —— in joint tenancy, &c."

REMAINDER OR REVERSION, on estate for life, or years,

(*d*) If in remainder or reversion, say,

"in remainder or reversion, expectant immediately upon the decease of ——, of &c., (*or* the end or other sooner determination of an indenture of lease, bearing date on or about the —— day of ——, 18—, for —— years† from the —— day of ——, 18—, granted by [*lessor*], of &c., (their late father deceased) to [*lessee*], of &c., of and in ALL &c."

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or for years determinable on lives.

† If for years determinable on lives, say,

"*if* [*nominees*], of &c., (any) or either of them should so long live, granted, &c."

sion of ALL THOSE two closes or parcels of land, situate at ——, in the county of ——, in the occupation of ——; *and also all that* messuage or tenement, and garden, situate at —— aforesaid, in the occupation of ——. AND WHEREAS the said [*first party*] and [*second party*], have mutually agreed to effectuate a partition of the said lands and hereditaments, upon the terms and in the manner hereinafter mentioned. NOW THESE PRESENTS WITNESS, that the said [*first party*] doth hereby for himself, his heirs, executors, and administrators, agree with the said [*second party*], his heirs and assigns; *and* the said [*second party*] doth hereby for himself, his heirs, executors, and administrators, agree with the said [*first party*], his heirs and assigns, in manner following, that is to say (*e*); THAT the said *two closes or parcels of land shall hereafter belong to, and become the sole property of the said [*first party*], his heirs and assigns (*f*); AND that the said messuage or tenement, and garden, shall hereafter belong to, and become the sole property of the said [*second party*], his heirs and assigns (*f*): AND that it shall be referred to ——, of &c., a referee nominated by and on the behalf of the said [*first party*], and ——, of &c., a referee nominated by and on the behalf of the said [*second party*], to decide and determine (*g*), whether any, and what sum

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Parcels.

Recital of agreement for partition.

Testatum.

Part of premises to belong to one party, and part to the other.

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Referees to determine equality of partition.

(*e*) "that each of the said parties doth hereby for himself, his heirs, executors, and administrators, agree with the other of them, his executors, administrators, and assigns, in manner following, that is to say; THAT the messuage and garden, now in the occupation of ——, shall hereafter belong to, and become the sole property of the said [*first party*], his executors, administrators, and assigns, for the remainder of the said term; *and* that the messuage and garden, now in the occupation of ——, shall hereafter belong to, and become the sole property of the said [*second party*], his executors, administrators, and assigns, for the remainder of the said term."

LEASEHOLD.

(*f*) "subject to the said estate for life (*or* years) of the said ——"

REMAINDER OR REVERSION.

(*g*) "which of the said parties shall hereafter during

LEASEHOLD.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

of money, shall be paid, for equality of partition; and whether by a yearly payment, with a power of distress and entry, or by the payment of a sum in gross; and by which of the said parties, and at what time, such money shall be paid (*h*); And if the said re*ferees should not agree in their determination, within the space of —— calendar months from the date hereof, Then the same shall be referred to such one person as the said two referees shall, within the space of —— calendar months from the date thereof, for that purpose appoint to be umpire, who shall decide and determine the same within —— calendar months next after he shall be appointed umpire. And that when it shall have been determined whether any, and what sum of money, shall be paid for equality of partition, and in what manner, and by which of the said parties such money shall be paid (*i*), *Then* the said parties respectively, and their respective heirs and

Umpire, in default of referees, to determine equality of partition.

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Parties to execute mutual conveyances.

Referees, or umpire, to determine which party shall pay rent, or in what proportions; and whether cross powers of distress shall be inserted in assignments.

the said term, pay the yearly rent of —— pounds, reserved and made payable by the said indenture of lease, or otherwise in what proportion they shall pay the same; and whether there shall be inserted in the conveyances and assignments hereinafter agreed to be made, cross covenants for payment of the apportioned rent, and cross powers of distress and entry on the non-payment of the same, by the said parties respectively, or their respective executors, administrators, or assigns, in order that the said parties respectively, and their respective executors, administrators, and assigns, may be reimbursed all costs, charges, and expenses, which he or they shall incur, sustain, disburse, or expend, for, or by reason or means of the non-payment of the rent to be paid by the other of the said parties, his executors, administrators, and assigns, and"

REVERSION.

(*h*) "and to which of the said parties, or in what proportion, the yearly rent, reserved by the said indenture of lease, shall be paid during the continuance of the term thereby granted;"

(*i*) "and which of the said parties shall be entitled to the said yearly rent, or in what proportions,"

assigns, shall, with all convenient speed (*k*), make, do, and execute, all such acts, deeds, conveyances, or assurances, as the counsel of the said parties respectively, or their respective heirs or assigns, shall advise or require, for the purpose of conveying and assuring the said hereditaments and premises hereby agreed to be held in severalty, unto the other of them the said parties, his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint: (AND that the said referees, or their umpire, shall be, and they and he are hereby authorized, (if they or he should think fit) to make a survey of the lands and hereditaments, and to cause a map or plan to be drawn thereof); and that the *costs, charges, and expenses, of the respective conveyances of the premises to be taken in severalty as aforesaid, shall be paid and borne by the party to whom the same shall be made; *but* that the costs, charges, and expenses, of preparing, engrossing, and executing this present agreement (and a duplicate hereof), or in anywise relating thereto, (and of making such survey, and such map as aforesaid), and all other costs, charges, and expenses of the said referees, or their umpire, and all other costs, charges, and expenses incurred, or to be incurred, in or about the partition hereby agreed to be made, or in anywise relating thereto, shall be paid and borne by the said parties hereto, and their respective heirs, executors, administrators, and assigns, in equal proportions: AND LASTLY, that the said referees, or their umpire, shall decide to which of the said parties

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Power to referees, or umpire, to make survey, &c.

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Each party to pay for his own conveyance.

But other costs and charges to be borne equally.

Referees, or umpire, to decide who shall

(*k*) "with the license and consent of the lord or lords, lady or ladies, of the manor or manors, of which the same are holden†, make, do, and execute, all such acts, deeds, conveyances, surrenders, or assurances, as the counsel of the said parties respectively, or their respective heirs or assigns, shall advise or require, for the purpose of conveying, surrendering, and assuring the said, &c."

COPYHOLD.

† It seems, that a partition cannot be perfected without the license, or subsequent consent, of the lord: such as admitting them tenants to the respective parts in severalty. Hal. MS. Hargr. n. Co. Litt. 59 a, (1). *Vide ante*, 202.

PARTITION OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

have title deeds, and who shall pay for attested copies, &c.

the custody of the several title-deeds relating to the said lands and hereditaments, shall respectively belong; *and* by which of them, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which the said arbitrators, or their umpire, may deem necessary, shall be borne. IN WITNESS whereof, the parties above named have hereto, (and to a duplicate hereof), set their hands and seals, the day and year first above written.

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PARTITION OF FREEHOLD AND COPYHOLD LANDS BY COMMISSIONERS.

AGREEMENT *for a* PARTITION *by* COMMISSIONERS, *of* FREEHOLD *and* COPYHOLD *Premises, between two* COHEIRESSES *and their* HUSBANDS, *and the* TRUSTEES *of a* SETTLEMENT *of the Share of one; And that certain parts of the Property shall be taken as part of each Allotment.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the —— day of —— in the year of our Lord, 18—; BETWEEN [A], of &c., and [B] his wife, of the first part; [*two trustees*], of &c., of the second part; [D] of &c., and [E] his wife, of the third part.

Parties.

Recital of intestacy, and seisin of father.

WHEREAS, [*father*] of &c., died intestate, on or about the —— day of ——, in the year 18—, seised of, or well and sufficiently entitled to the fee-simple of the freehold and copyhold lands and hereditaments hereinafter described, and hereby agreed to be divided and partitioned in severalty, and which thereupon descended and came to the said [B] and [E] as his only children, and heirs at law.

Descent to his daughters.

Settlement of one moiety.

AND WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, in the year 18—; and made, or expressed to be made, between the said [B], by her

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

then name and description of [*maiden name*], of the first part, the said [A] of the second part, and [*trustee*], of &c., of the third part; being a settlement made previously to and on the marriage of the said [A] and [B], and which was afterwards duly solemnized, and took effect: the moiety or equal half part of the said [B], of and in the said lands and hereditaments, was conveyed and covenanted to be surrendered to the said *[*trustee*], and his heirs: *As* to the said freehold lands and hereditaments, *To the use of, And as to* the said copyhold (*a*) lands and hereditaments, *In trust* for such

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To such uses as husband and wife should jointly appoint.

(*a*) As the statute of uses does not extend to *copyholds*, according to the prevailing opinion, it seems that springing uses, or uses to arise in future, cannot be created by a surrender of copyholds. Kitch. on Courts, 170, edit. 1657; 172, edit. 1663; Co. Cop. s. 54, Tr. 124; Wms. n. 2 Saund. 12; Gilb. Ten. 182; 1 Sand. Uses, 203, 3d ed.; 195, 2d. ed.; 1 Cru. Dig. 418, 2d ed.; Cru. Uses, 55; Sug. Gilb. Uses, 72; 1 Watk. Cop. [100], [185]; 2 *Ibid.* [193]; Gilb. Ten. 260, 261, Watk. n.; 5 Bac. Abr. 779, Gwill. edit.; Scriven's Cop. 185, 2d edit.; 1 Watk. Cop. [208]; Sug. n. Gilb. Uses, 353; Noy's Max. 85, 319, 9th edit. *Sed vide* Sanders on Surrenders of Copyholds, and Fearne's Contingent Remainders, 201, 3d edit.; 417, 4th edit.; 276, Butl. edit. *contra.* *Et vide* 5 Cru. Dig. 590, s. 98, 2d edit.

Springing uses cannot, it seems, arise on a surrender of copyholds.

[This doctrine was much discussed in the late case of *Boddington* v. *Abernethey*, 5 Barn. & Cress. 776, S. C. 8 Dowl. & Ryl. 626, where the point was, whether uses could be limited of a copyhold estate in execution of a power of revocation and new appointment. The facts were, that A., seised in fee of freeholds and in tail of copyholds, on her marriage conveyed the freeholds to the use of the intended husband for life, with remainders over; the deed containing a power to the trustees to sell, and for that purpose to revoke the uses and appoint the lands to a purchaser; and A. covenanted to surrender and suffer a recovery of the copyholds to the same uses; this surrender and recovery were duly perfected, the demandant in the recovery being admitted, and surrendering to the uses of the settlement. In execution of the power of sale in the settlement, the trustees sold the copyhold lands to the plaintiff in fee; and by virtue of the power of revocation they *revoked the uses to which the copyholds had been surrendered, and limited and appointed them to the use of the purchaser in fee;* and B. covenanted for himself and his wife to surrender the copyholds to the purchaser in fee. B. then surrendered them to the use of the trustees in fee, upon the trusts of the settlement; the trustees were admitted,

Copyholds may be limited to new uses under a power of revocation and new appointment.

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

person or persons, and for such ends, intents, and purposes, as the said [A] and [B] should at any time, and from time to time, by any deed or writing under their hands and seals, sealed and delivered by them in the presence of two or more credible witnesses, jointly appoint: AND in default of such joint appointment, to the use of such person or persons as the said [B], in and by her last will and testament, in writing, or any writing in the nature of her last will and testament, to be signed and sealed by her, in the presence of, and attested by, two or more credible witnesses, and whether sole or covert, should solely appoint; *And* in default of any such appointment, or so far as the same should not extend, *To the use* of, and *In trust* for the said [A], his heirs and assigns, in case he should survive his said wife. AND WHEREAS by indentures of lease and release, bearing date respectively on or about the —— and —— days of ——, in the year 18—, the release made between the said [E], by her then name and description of [*maiden name*], of the first part, the said [D], of the second part, and the said [*trustees*], of the third part; (being a settlement previously to the marriage of the said [D], and [E], and which was afterwards duly solemnized); the moiety or equal half part of the said [E], of and in the said lands and hereditaments, was* conveyed, and covenanted to be surrendered to the said [*trustees*], and their heirs, to certain uses, and upon certain trusts, therein particularly mentioned: In which said last in part recited indenture of release are contained the usual powers to the said [*trustees*], their heirs and assigns, with the consent and approbation of the said [D] and [E], or the survivor of them, to be testified by some writing under their, or his, or her hands and seals, or hand and seal, to make sale, partition, or exchange of the moiety of the said lands and hereditaments therein mentioned; with power to raise money to be paid, or to invest money

In default, as wife alone should by will appoint.

In default, to husband in fee, if the survivor.

Settlement of the other moiety.

[*222]

To certain uses and trusts;

With powers to trustees, with consent of husband and wife, or the survivor, to make sale, partition, or exchange.

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and afterwards surrendered to the use of the plaintiff, the purchaser, in fee, who was admitted accordingly. The question on a case from Chancery was, whether the plaintiff had an estate in fee-simple at the will of the lord, according to the custom of the manor, in the premises; and the Court, after an elaborate argument, certified that he had.]

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

received, for equality of partition. And whereas the said [A], and [B] his wife, and the said [*trustees*], with the consent of the said [D], and [E] his wife, testified by this writing, sealed and delivered by them in the presence of and attested by the two credible witnesses whose names are or are intended to be hereupon indorsed, as witnesses to the execution of these presents by the said [D], and [E] his wife, have mutually agreed to make a partition of the lands and hereditaments mentioned and comprised in the schedule hereunder written, or hereunto annexed. Now these presents witness, that for effectuating the said partition, the said [A], for himself, his heirs, executors, and administrators, and for the said [B], his wife; and also the said [B], do hereby respectively agree with the said [*trustees*], their heirs and assigns, and they the said [*trustees*], as such trustees as aforesaid, with the consent of the said [D], and [E] his wife, testified as aforesaid, do hereby agree with the said [A], and [B] his wife, in manner following, that is to say; That a partition or division of all and singular the said lands and other hereditaments, mentioned and comprised in the said schedule hereunder written, or hereunto annexed, (*except* three cottages &c., situate &c., and a close of land &c., situate &c.,) into two separate allotments, of equal value, or as nearly so as circumstances will permit, shall be made by [*commissioners*], of &c.: And that the said commissioners shall decide and determine, whether any, and what sum of money shall be paid for equality of partition, and by which of the parties such money shall be so paid: That the said three cottages &c., shall, upon the said partition, be taken as *part of the share in severalty of the said [*trustees*], as such trustees as aforesaid; And the said close, &c. shall be taken in severalty, by the said [A], and [B] his wife, and the difference in value between the said cottages &c., and the said close &c., shall be ascertained and determined by the said commissioners, and shall be paid for equality of partition accordingly: That for further enabling the said commissioners to make such allotments and division as aforesaid, it shall be lawful for them, and they are hereby authorized, to make a survey of the said estate, and to cause a map or plan to be drawn thereof: That if the

Agreement to make partition.

Testatum.

Commissioners to make partition,

and decide who shall pay money for equality.

Certain premises to be allotted to each.

[*223]

The difference in value to be paid by each.

Commissioners authorized to make a survey and map.

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

said commissioners should differ in opinion, touching the said intended partition, or the money to be paid for equality, or touching the mode of carrying the said partition into effect, or any matter or thing relating thereto, then and in every such case, the subject matter of every such difference of opinion shall be reduced into writing, and shall be referred to the decision of [*umpire*], or some other umpire, to be named by the said commissioners for that purpose; AND that the determination or decision of such umpire, upon the matter so to be referred to him, shall be final, binding, and conclusive upon both the said commissioners, and upon the parties hereto: THAT when the allotments and division hereinbefore agreed upon, shall have been made, the said parties shall draw lots, in such manner as the said commissioners shall appoint, for the privilege of chusing one of the allotments, into which the said estates (*except* as aforesaid) shall have been divided: AND that when it shall have been decided in manner aforesaid, which of the said allotments shall be taken in severalty by the said [*trustees*], as such trustees as aforesaid, and whether any and what sum shall be paid for equality of partition, and by which of the said parties such money shall be paid; THEN the said [A], and [B] his wife, and all other necessary parties, shall, at the expense of the said [D], and [E] his wife, their heirs and assigns, with all convenient speed, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, appointments, conveyances, surrenders, or assurances in the law, as by the said [*trustees*], their heirs or assigns, or their or his counsel, shall be advised or required, for the purpose of vest*ing the said three cottages, &c. and also such of the said allotments as shall have been decided to be taken in severalty by the said [*trustees*], their heirs or assigns, with the appurtenances, in them the said [*trustees*], their heirs and assigns; *nevertheless*, as to such part of the said lands and hereditaments as are of copyhold tenure, with the license and consent of the lord or lords, lady or ladies, of the manor or manors, of which the same are holden (*a*); and

Umpire to decide the differences of commissioners.

Parties to draw lots for the privilege of chusing.

When allotments, &c. ascertained, to execute conveyances to each other.

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(*a*) *Vide ante*, 202, 218.

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

nevertheless, upon and for the uses, trusts, ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, in and by the said indenture of settlement, of the —— day of ——, 18—, expressed and declared of and concerning the said undivided moiety, hereditaments, and premises, comprised in and conveyed, and covenanted to be surrendered, by the same indenture, as aforesaid: AND the said [D], and [E] his wife, and all other necessary parties, shall, at the expense of the said [A], and [B] his wife, their executors or administrators, with all convenient speed, make, do, and execute, or cause and procure to be made, done, and executed, all such acts, deeds, appointments, conveyances, surrenders, and assurances in the law, as by the said [A], and [B] his wife, or the survivor of them, or his or her executors or administrators, or their, his, or her counsel, shall be advised or required, for the purpose of settling the said close, &c. and also such of the said allotments as shall have been decided to be taken in severalty by the said [A], and [B] his wife, with the appurtenances, *To the uses*, upon the trusts, and for the ends, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, in and by the said in part recited indenture, of the —— day of ——, 18—, expressed and declared of and concerning the hereditaments and premises, thereby limited and settled as aforesaid; *but nevertheless*, as to such part of the said lands and hereditaments as are of copyhold tenure, with the license and consent of the lord or lords, lady or ladies of the manor or manors, of which the same are holden: THAT the costs, charges, and expenses, of preparing, engrossing, and exe-

Expenses to be borne by parties equally.

*cuting this present agreement, and of making such partition and division as aforesaid, and of making such survey, and such map as aforesaid, and all other costs, charges, and expenses, incurred, or to be incurred, in and about the said partition and division, or in any wise relating thereto, (*except* as hereinbefore is provided for, and also except the expenses of any fine or fines, recovery or recoveries, which may be necessary, and which expenses are to be paid by the party, of whose share the same respectively shall be levied or suffered), shall be paid and borne by the parties

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except fines or recoveries.

PARTITION OF FREEHOLD AND COPYHOLD LANDS, BY COMMISSIONERS.

to the said partition in equal proportions; (*b*) THAT if either of the parties to the said intended partition should require an attested copy or attested copies, of any of the title deed or title deeds, in the custody of the other party to the said partition, or to have a deed of covenant for the production of any such title deed or title deeds, then and in such case, the expense of making such attested copy or copies, and the expenses attending the framing, engrossing, and executing of such deed of covenant, shall be paid by the party requiring the same: AND for the due execution and observance of the agreements hereinbefore contained, on the part of the said [A], and [B] his wife, the said [A] doth hereby bind himself, his heirs, executors, and administrators, to the said [*trustees*], their executors and administrators, in the sum of —— pounds (*c*): AND for the due performance and observance of the agreement hereinbefore contained on the part of the said [*trustees*], the said [D] doth hereby bind himself, his heirs, executors and administrators, to the said [A], his executors and administrators, in the like sum of —— pounds. IN WITNESS, &c.

Expenses of attested copies, &c. to be paid by the party requiring same.

Nomine pœnæ.

Schedule.

THE SCHEDULE to which the above written agreement refers.

(*b*) If the commissioners are to decide who shall have the title deeds, *vide post*, 231.

(*c*) *Vide ante*, 47, (*h*).

PARTITION BY ARBITRATORS.

AGREEMENT *to leave it to* ARBITRATORS *to make a* PARTITION, *and to dismiss a Bill in Chancery for a Partition, where one of the Parties is seised of Seven Eighths, and the other Party of One Eighth, of a Manor, Farm, and Lands.*

ARTICLES OF AGREEMENT indented, had, made, concluded, and agreed upon, the —— day of ——, in the year of our Lord 18—; BETWEEN [*first party*], of ——, in the county of ——, of the one part; and [*second party*], of ——, in the county of ——, of the other part. Parties.

WHEREAS the said [*first party*] and [*second party*], are seised of the inheritance in fee-simple of and in the manor of ——, in the county of ——, with the rights, members, and appurtenances; *And also* of and in a capital messuage or tenement called ——, and the outhouses, buildings, barns, stables, yards, gardens, orchards, and appurtenances thereunto belonging; *And also* of and in all and singular the arable, pasture, and marsh lands, and salt marsh grounds, to the said manor, messuage, and farm belonging, or in any wise appertaining, containing by estimation —— acres, or thereabouts, situate, lying, and being, in the parish of ——, in the county of ——, and now in the occupation of ——, as tenant thereof, in the shares or proportions following, that is to say; the said [*first party*] is seised of or entitled to seven undivided eighth parts or shares thereof; and the said [*second party*] is seised of or entitled to the *remaining undivided one eighth part or share thereof. AND WHEREAS the said [*first party*], on or about the —— day of ——, 18—, filed a bill in the high Court of Chancery, against the said [*second party*], praying, *That* an account might be taken, by and under the direction of *Recital*,— seisin in undivided and unequal shares. [*227] Bill in Chancery, filed to ascertain money paid for redemption of land tax, and

PARTITION BY ARBITRATORS.

for a division and partition;

the said court, of the price or sum paid, or of stock transferred by [*father*], deceased, the late father of the said [*first party*], for the redemption of the land-tax charged on the said estates; *And* that the value of the said stock might be ascertained, and the defendant directed to repay the plaintiff one eighth part of the value thereof, or to transfer to the plaintiff in the books of the Governor and Company of the Bank of England, like stock to the amount of one eighth part thereof; *And* that an account might be taken under the direction of the said court, of what was due and owing in respect of the rents and profits of the said estates; *And* that a fair and equal partition and division might be made of the said manor and estate, between the plaintiff and defendant, according to their respective rights and interests therein; *And* that a commission might issue for that purpose, with the usual directions; *And* that the parts and shares of the said manor and estate, which should be allotted to the plaintiff and defendant, under the said commission, might be enjoyed by them in severalty; *And* that proper conveyances thereof might be executed. AND WHEREAS the said [*second party*] hath not yet put in his answer to the said bill. AND WHEREAS since the said bill was filed, the said [*second party*] hath paid to the said [*first party*], the value of one eighth part of the stock invested by the said [*father*], deceased, in the purchase of the land-tax, of or upon the said lands and hereditaments; *And* the said [*first party*] and [*second party*] have settled all accounts between them, in respect of the rents and profits of the said manor, lands, and hereditaments, up to the —— day of —— last past; *And* the said [*first party*] and [*second party*] have agreed that the said suit in the Court of Chancery should be forthwith dismissed without costs; *And* that a fair partition should be made between them, in proportion to their respective shares, of the said lordship or manor, lands, and hereditaments, by two indifferent * persons, one of whom to be chosen by the said [*first party*], and the other by the said [*second party*], and in case such two persons should not agree in their determination, then that the same partition should be made by such one person as the said two referees should for that

which defendant had not answered.

All accounts between parties settled.

Agreement to dismiss bill without costs, and make partition by arbitrators or umpire.

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purpose appoint; *And* the said [*first party*] and [*second party*] have also agreed, that, in making such partition, the said manor of ——, exclusive of the said messuage, farm, and lands, should be considered and taken to be of the value of —— pounds, of lawful money of Great Britain, and should be allotted by the said referees, or their umpire, as they or he should think proper, either to the said [*first party*], or to the said [*second party*], as part of his share of the whole estate. AND WHEREAS in pursuance of the said agreement, the said [*first party*] hath nominated [*arbitrator*], of ——, in the county of ——, and the said [*second party*] hath nominated [*arbitrator*], of ——, in the county of ——, referees, or arbitrators, for the purpose of making such partition as aforesaid. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, *it is hereby mutually agreed* between and by the said parties hereto, and each of them the said [*first party*] and [*second party*], both hereby for himself, his heirs, executors, and administrators, and so far as the covenants hereinafter contained are respectively applicable to him or them, covenant with the other of them, his heirs and assigns, in manner following, that is to say; THAT the said messuage, farm, lands, and hereditaments, hereinbefore mentioned (exclusive of the said manor of ——), shall be forthwith valued and appraised by the said [*arbitrators*]; and in case they should not agree in their valuation within the space of (*two*) calendar months, to be computed from the date hereof, THEN the same shall be valued and appraised by such one person as the said [*arbitrators*] shall within the space of (*three*) calendar months from the date hereof, for that purpose nominate and appoint to be umpire in the premises; who shall make his valuation within (*two*) calendar months next after he shall be appointed umpire: THAT for the purpose aforesaid, it shall be lawful for the said [*arbitrators*], or their umpire, to admeasure, or cause the said lands to be *admeasured, and to make, or cause to be made, a plan or map, or plans or maps, of the same messuage, farm, lands, and hereditaments, and to do and execute all such further and other acts, matters, and things, as they or he shall think necessary or proper: THAT after such valuation shall

PARTITION BY ARBITRATORS.

Manor to be considered of the value of —— pounds.

Nomination of referees.

Testatum.

Premises to be valued by referees or umpire.

Arbitrators, or umpire, to cause premises to be measured, &c.

[*229]

After valuation, &c., arbitrators

PARTITION BY ARBITRATORS.

to set apart, with or without the manor, one-eighth part for second party.

be made as aforesaid by the said [*arbitrators*], they the said [*arbitrators*] shall forthwith, within the space of ——, then next after, appropriate, select, and set apart, either with or without the said manor of ——, as they shall think proper (reckoning the value of such manor at the sum of ——, as aforesaid), so much and such part and parts of the said messuage, farm, lands, and hereditaments, as they shall think proper, and as they shall, with the said manor if included in such appropriation and selection, but if not, then without such manor, adjudge to be the full value of one eighth part of the whole of the said manor, messuage, farm, lands, and hereditaments, as and for the specific part or share of him the said [*second party*], of and in the same manor, messuage, farm, lands, and hereditaments, and to be by him, his heirs and assigns, held in severalty, in lieu of his undivided part or share therein: THAT in case the said [*arbitrators*] should not within the said space of ——, agree in such appropriation and selection, as aforesaid, then such appropriation and selection shall be made by such one person as the said [*arbitrators*] shall within the space of ——, for that purpose appoint umpire, who shall make such appropriation and selection, within —— next after he shall be appointed umpire as aforesaid: THAT the residue of the said messuage, farm, lands, and hereditaments, not appropriated and selected as and for the specific part or share of the said [*second party*], as aforesaid, together with the said manor, if not included in such appropriation and selection as aforesaid, shall be taken by the said [*first party*], and be held by him, his heirs and assigns, in severalty, in lieu of his undivided parts or shares of and in the whole of the said manor, messuage, farm, lands, and hereditaments: THAT the costs, charges, and expenses, of preparing and executing these presents, and of making such admeasurements, plans, and maps as *aforesaid, and of making such valuation, appraisement, appropriation, and division as aforesaid, and otherwise attending the aforesaid reference, shall be borne and paid by and between the said [*first party*] and [*second party*], in equal shares and proportions (*a*): THAT the said [*first party*]

If arbitrators should not agree, umpire to select.

Residue to be taken by first party.

The expenses of measuring, &c. to be borne in equal proportions.

[*230]

To dismiss bill in equity.

(*a*) Where the parties are interested unequally, and the partition is

shall and will forthwith, at the mutual expense of himself, and the said [*second party*], cause the said bill, so filed by the said [*first party*] as aforesaid, to be dismissed without costs: THAT he the said [*first party*], and all other necessary and proper parties, shall and will, at any time or times after such appropriation, selection, and division shall be made as aforesaid, upon every reasonable request of the said [*second party*], his heirs or assigns, and at his or their costs and charges, (except the costs and charges of or attending any fine or recovery, which it may be found necessary to levy or suffer, in order to make out the title of the said [*first party*],) make, do, and execute, or cause and procure to be made, done, and executed, all such lawful and reasonable acts, things, deeds, devices, conveyances, and assurances in the law whatsoever, which shall be requisite or necessary, for perfectly and absolutely granting, releasing, and assuring the said undivided parts or shares of him the said [*first party*], of and in the specific part or share which shall be appopriated and selected for the said [*second party*], to be by him held in severalty as aforesaid, with the rights, members, and appurtenances, unto and to the use of the said [*second party*], his heirs and assigns for ever, or otherwise, as he or they shall direct or appoint, as by the said [*second party*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required: AND THAT the said [*second party*] and all other necessary and proper par-*ties, shall and will at any time or times, after such appropriation, selection, and division shall be made as aforesaid, upon every reasonable request of the said [*first party*], his heirs or assigns, and at his or their costs and charges (except the costs and charges of or attending any fine or recovery which it may be found necessary to levy or suffer,

PARTITION BY ARBITRATORS.

First party to execute conveyance to second party.

Second party to execute conveyance to first party.

[*231]

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made at the request of the person having the smaller share, or he is plaintiff in equity for a partition, it is but justice that the costs should be borne equally; but where the person having the smaller share is forced to make a partition, it would be more equal justice for the expenses to be paid *pro ratâ*, according to their shares. See *Hyde* v. *Hindly*, 2 Cox, 408, *et ante*, 212.

PARTITION BY ARBITRATORS.

in order to make out the title of the said [*second party*],) make, do, and execute, or cause and procure to be made, done, and executed, all such lawful and reasonable acts, things, deeds, devices, conveyances, and assurances in the law whatsoever, which shall be requisite or necessary for perfectly and absolutely granting, releasing, and confirming the undivided part or share of him the said [*second party*], of and in the specific part or share which shall be appropriated and selected for the said [*first party*], to be by him held in severalty, as aforesaid, with the rights, members, and appurtenances, unto and to the use of the said [*first party*], his heirs and assigns for ever, or otherwise, as he or they shall direct or appoint; as by the said [*first party*], his heirs or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required: THAT the said arbitrators, or their umpire, shall decide to which of the said parties the custody of the several title deeds relating to the said manor, messuage, farm, lands, and hereditaments, shall respectively belong, and by whom, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which may be necessary, shall be borne: THAT if the said [*first party's arbitrator*] should die, or refuse, or become incapable to act as arbitrator, before the whole of the premises hereby referred shall be determined by the said [*arbitrators*], or their umpire; *Then* the said [*first party*], his heirs or assigns, shall forthwith thereafter nominate and appoint some other person to be arbitrator or referee, in the stead and place of the said [*first party's arbitrator*]; and so in like manner upon the decease or neglect, or refusal to act, of any arbitrator succeeding to the place of the said [*first party's arbitrator*]: (*Add a similar clause as to second party's arbitrator*): THAT every arbitrator so to be appointed as a substitute for the said [*first party's *arbitrator*] or [*second party's arbitrator*], or any succeeding arbitrator, shall, as to such of the premises as shall not at the time of his nomination and appointment be actually determined, or referred to an umpire, have the same powers and authorities as are hereby vested in the arbitrator in or to whose place he shall come or succeed: AND LASTLY, the submission and agreement hereby made, shall be made

Commissioners, or umpire, to decide who shall have title deeds.

If first party's arbitrator die before award, he to appoint another.

Same as to second party's. New arbitrators to have same powers as old arbitrators.

[*232]

Submission to be made a rule of Court.

a rule of his Majesty's Court of ——, at Westminster (*a*): IN WITNESS whereof, the said parties have hereto (interchangeably) set their hands and seals, the day and year first above written.

PARTITION BY ARBITRATORS.

[(*a*) Where it is considered probable that any difficulty will be experienced in compelling a party to execute conveyances pursuant to the award, the expedient is sometimes adopted of conveying the entirety of the lands in the first instance to the arbitrators, upon trust to convey to the several parties the portions which shall be respectively awarded to them.]

Lands sometimes conveyed to the arbitrators to be conveyed in allotments to parties.

[233]

AGREEMENT *for a* PARTITION *by one Commissioner, where one of the Parties is seised subject to Contingent Remainders, which makes it necessary to procure a private Act of Parliament;* AND *that a Close of Land of which the Parties are seised in common, to Uses to prevent Dower on a joint Purchase, shall go with the Allotment which shall include a Dwelling-house adjoining, at the Price of Half of the Money paid for the Close.*

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

ARTICLES OF AGREEMENT made the —— day of ——, 18—, BETWEEN [*first party*], of &c., of the one part; and [*second party*], of &c., of the other part.

Parties.

WHEREAS [*testator*], late of —— in the county of ——, esquire, deceased, being seised to him and his heirs in fee-simple, of an undivided moiety of and in the messuages, tenements, lands, and hereditaments, in the shedule hereunder written, mentioned or comprised by his last will and testament in writing, bearing date on or about the —— day of ——, 18—, and duly executed and attested for the devise of freehold lands of inheritance; and after the decease of the said [*testator*], and on or about the —— day

Recital of a devise of a moiety of the premises.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

of ——, 18—, duly proved in the Prerogative Court of the Archbishop of Canterbury, gave and devised the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, unto [*eldest son*], his eldest son, for the term of his life, without impeachment of waste; *And* from and after the de*cease of the said [*eldest son*], unto his first and every other son, severally and successively, according to their respective seniorities, in tail male; *And* in default of such issue, unto his the testator's second son, the said [*first party*], and his assigns for his life, without impeachment of waste; *And* from and after the decease of the said [*first party*], unto his first and every other son, severally and successively, according to their seniorities, in tail male: *And* in default of such issue respectively, unto his own the testator's right heirs for ever: AND the said [*testator*] afterwards, and on or about the —— day of ——, 18—, departed this life, leaving the said [*eldest son*], his eldest son and heir at law: AND WHEREAS by indentures of lease and release, bearing date respectively, on or about the —— and —— days of ——, 18—, the indenture of release being made, or expressed to be made, between the said [*eldest son*] of the first part, the said [*first party*] of the second part, and [*mortgagee*], of —— in the county of ——, yeoman, of the other part, the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, were by the said [*eldest son*], and [*first party*], conveyed and assured unto the said [*mortgagee*], and his heirs, *To hold* the same to the said [*mortgagee*], and his heirs; *To the use* of the said [*mortgagee*], his heirs, and assigns, *But subject* nevertheless, and without prejudice, to the devises and limitations contained in the said will of the said [*testator*], to and for the benefit of the issue male of the said [*eldest son*], and the issue male of the said [*first party*] respectively; *And subject also* to a proviso or agreement for redemption on payment by the said [*eldest son*] and [*first party*], or either of them, their or either of their heirs, executors, administrators, or assigns, of the sum of [*mortgage money*], with interest for the same, at the time and in the manner in the said indenture of release mentioned: AND WHEREAS the said [*eldest son*] de-

To eldest son for life.

Remainder to his first and other sons in tail male.

[*234]

Remainder to first party for life.

Remainder to his first and other sons in tail male.

Remainder to testator's own right heirs.

Death of testator.

Heirship.

Lease and release, by way of mortgage, by eldest son and first party.

Subject to the devises to their respective issue male.

And subject to equity of redemption.

Death of eldest

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

parted this life on or about the —— day of ——, 18—, a bachelor and intestate, [and was interred in the burying ground of the parish of ——]: AND WHEREAS by indentures lease and release, bearing date respectively on or about the —— and —— days of ——, 18—, and made between the said [*mortgagee*] of *the one part, and the said [*first party*] of the other part, the said undivided moiety of and in the said messuages, tenements, lands, and hereditaments, were conveyed and assured by the said [*mortgagee*] unto the said [*first party*] and his heirs, *To hold* the same unto and *To the use* of the said [*first party*], his heirs and assigns: *But subject* nevertheless to the devises and limitations contained in the said will of the said [*testator*], to or for the benefit of the issue male of the said [*first party*], or to such of them as were then subsisting: AND WHEREAS the said [*second party*] is seised of or entitled to the other undivided moiety of and in the said messuages, lands, tenements, and hereditaments, with the appurtenances, for an estate of inheritance in fee-simple: AND WHEREAS the said [*first party*] hath no issue male: AND WHEREAS the said [*first party*] and [*second party*] have mutually agreed to effectuate a partition of the aforesaid messuages, lands, tenements, and hereditaments, upon the terms, and in manner hereinafter mentioned: AND WHEREAS the titles of the said [*first party*] and [*second party*] to their respective moieties, of and in the said messuages, tenements, lands, and hereditaments, have been approved of by the counsel of the said parties respectively, subject to the objection which arises to the title of the said [*first party*], to his undivided moiety by reason of the same having been conveyed to and vested in the said [*mortgagee*], subject and without prejudice to the devises and limitations contained in the said will of the said [*testator*], to or for the benefit of the issue male of the said [*first party*], in the manner hereinbefore mentioned and recited. NOW THESE PRESENTS WITNESS, that the said [*first party*] doth hereby agree with the said [*second party*], who doth hereby agree with the said [*first party*], in manner following, that is to say; THAT on or before the —— day of —— next, a partition or division shall be made of all and singular the said messuages, tenements,

son intestate, a bachelor.

Reconveyance from mortgagee to first party.

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Subject to the devises to his issue male.

Second party seised of other moiety.

First party has no issue male.

Agreement for partition.

Titles of both parties have been approved by their counsel,

except as to the issue male of first party.

Testatum.

Partition to be made by one commissioner.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

lands, and hereditaments, in the schedule hereunder written mentioned or comprised, and all other the estates in the said parishes of —— and ——, if any, belonging in undivided moieties to them the said [*first party*] and [*second party*], into two separate allotments, of equal value,

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*or as nearly so as circumstances will permit, shall be made by [*commissioner*], of ——, in the county of ——, land surveyor: THAT when and as soon as such partition or division shall have been made, the said [*first party*] and [*second party*], or some person or persons authorized by them respectively in that behalf, shall, under the direction, and in the manner directed by the said commissioner, draw lots for the said allotments: THAT it shall be lawful for the said commissioner to decide and determine, whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid: THAT when it shall have been determined, which of the said allotments shall be taken in severalty by the said [*first party*], and which of the said allotments shall be taken in severalty by the said [*second party*], and when the said commissioner shall have decided and determined, whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid, the said parties respectively, or their respective heirs or assigns shall, with all convenient speed, apply to Parliament for an act to confirm the said partition or division, and make, do, and execute, all such other acts, deeds, or assurances, as the counsel of the said parties respectively, or their respective heirs or assigns, shall advise or require for the purpose of vesting such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*first party*], with the appurtenances, in him the said [*first party*], his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint, *Subject* and without prejudice to the devises and limitations contained in the said will of the said [*testator*], deceased, to or for the benefit of the issue male of the said [*first party*]; *And* for the purpose of vesting such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*second party*], with the appurtenances

Parties to draw lots for allotments.

Commissioner to determine equality of partition money.

Agreement to apply for act of Parliament to confirm partition.

And execute conveyances to each other.

Subject to recited devises, as to first party's allotment.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

in him the said [*second party*], his heirs and assigns, or to such uses and in such manner as he or they shall direct or appoint: THAT the said commissioner shall be, and he is hereby authorized, to make a survey of the said estates, and to cause a map or plan to be drawn thereof: THAT *the costs, charges, and expenses of preparing, engrossing, and executing this present agreement, and of making such partition or division as aforesaid, and of applying for and obtaining an act of Parliament for confirming the same, and of making such survey, and such map or plan as aforesaid, and all other costs, charges, and expenses incurred, or to be incurred, in or about the said partition or division, or in anywise relating thereto; *Except* the costs, charges, and expenses which have been incurred by the said [*first party*], in making out the title to his own undivided moiety of the said messuages, tenements, lands, and hereditaments, and in investigating the title of the said [*second party*] to the other undivided moiety thereof; *And* the expenses which have been incurred by the said [*second party*] in making out the title to his own undivided moiety of the said messuages, tenements, lands, and hereditaments, and in investigating the title of the said [*first party*] to the other undivided moiety thereof; *And also except* any additional costs or charges, which may be incurred by reason of the absence from England of either of the said parties, (which additional costs or charges are to be paid by the party whose absence shall occasion the same) shall be paid and borne by the said [*first party*] and [*second party*], in equal proportions: THAT if either of the said parties to the said intended partition should require an attested copy, or attested copies, of any title deed or title deeds, in the custody of the other party to the said partition; or to have a deed of covenant for the production of any such title deed, or title deeds, THEN and in such case, the expense of making such attested copy or copies, and the expenses attending the preparing, engrossing, and executing of such deed of covenant, shall be paid by the party requiring the same: AND WHEREAS by an indenture of feoffment, bearing date on or about the —— day of ——, 18—, and made between [*feoffor*], of &c., of the

Authority to commissioner to make survey and maps.

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Costs to be borne equally,

except each to pay costs of making his own, and investigating other party's title.

And each to pay costs incurred by his absence from England.

Each to pay for attested copies, &c. required by him.

Recital of feoffment of close.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

first part; and the said [*first party*] and [*second party*], of the second part; and [*trustee to prevent dower*] of the third part; and by livery of seisin, duly made, the said [*feoffor*], in consideration of the sum of —— pounds, to him paid by the said [*first party*] and *[*second party*], did enfeoff, release, ratify, and confirm, unto the said [*first party*] and [*second party*], and their heirs, *All that* close of land, situate, &c. *To hold* the same to the said [*first party*] and [*second party*], and their heirs; *as to, for, and concerning*, one undivided moiety or half part thereof, *To such uses* as the said [*first party*] should appoint, in the manner and by the means therein mentioned; *And* in default of such appointment, and in the mean time subject thereto, *To the use* of the said [*first party*] and his assigns, for his life; With remainder, *To the use* of the said [*trustee*], and his heirs, for the life of the said [*first party*], *In trust* for the said [*first party*] and his assigns, With remainder, *To the use* of the said [*first party*], his heirs and assigns; *And as to, for, and concerning*, the other one undivided moiety or half part thereof, *(repeat similar uses in favour of* [*second party*]). AND WHEREAS the said close comprised in the said hereinbefore recited indenture of feoffment, lies contiguous to the house and premises in the occupation of ——, (being part of the hereditaments so agreed to be parted and divided as aforesaid), and was so purchased by the said [*first party*] and [*second party*], as aforesaid, to the intent that the same might be held and enjoyed therewith: NOW IT IS HEREBY FURTHER AGREED, by and between the said [*first party*] and [*second party*], that when the aforesaid partition or division shall have been completed, such one of the said parties, to whom, upon such partition or division as aforesaid, the said house and premises in the occupation of the said ——, shall be allotted in severalty, shall become the purchaser of the undivided moiety of the other party, of and in the said close, comprised in the said hereinbefore in part recited indenture of feoffment, with the appurtenances, at the price of one moiety of the said sum of —— pounds, at which the entirety thereof was purchased by the said [*first party*] and [*second party*], as hereinbefore is mentioned; and

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As to a moiety to uses, to prevent dower of first party's wife.

And as to the other moiety, to uses to prevent dower of second party's wife.

Close lies contiguous to a dwelling-house.

Further testatum.

Party to whom dwelling-house allotted, to purchase other's moiety in close, at half of original purchase money.

such purchase shall, as soon as the case will admit, be completed accordingly (*a*). In witness, &c.

PARTITION BY ONE COMMISSIONER AND ACT OF PARLIAMENT.

THE SCHEDULE above referred to.

Schedule.

[(*a*) It seems proper to add, "The person purchasing such moiety to pay the expense of the conveyance thereof, and not to require any other title than that which was deduced thereto on the purchase of the entirety by the said respective parties as aforesaid."]

To accept title deduced on the purchase.

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PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

AGREEMENT *between a Husband and Wife, Tenants for Life successively, of one Moiety of Freehold Lands, with a Power in the Wife to appoint in Fee, and in Trustees to concur in making Partition, on the one part; and the Tenant in Common in Fee of the other Moiety, on the other; subject to Mortgages for Years of the Entirety: for a* Partition *by* Commissioners *or their* Umpire, *who are to make the Allotments without the Parties drawing Lots.*

WITHOUT DRAWING LOTS.

ARTICLES OF AGREEMENT made the —— day of ——, 18—; Between [*first party*], of &c., and [*wife*], his wife, of the one part; and [*second party*], of &c., of the other part.

Parties.

Whereas immediately before the execution of the indentures hereinafter recited, the said [*wife*], the wife of the said [*first party*], and the said [*second party*], were seised of or entitled to the messuages, lands, and hereditaments hereinafter particularly mentioned, with their appurtenances, for an estate of inheritance in fee-simple, as tenants in common in remainder or reversion, expectant immediately upon the decease of [*father, with the same christian and surname as second party*], the elder, late of

Recitals, of seisin in fee as tenants in common in remainder,

after estate of tenant for life, now deceased.

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

——, deceased, subject nevertheless to certain mortgages for terms of years affecting the same premises. AND WHEREAS by indentures of lease and release, bearing *date respectively on or about the —— and —— days of ——, 18—, the release being made between the said [*wife*], the wife of the said [*first party*], by her then name and description of [*maiden name*], of &c., spinster, of the first part, the said [*first party*], of the second part, and [*trustee*], of &c., of the third part, (being a settlement made previously to the marriage of the said [*first party*] with the said [*wife*] his wife, and which marriage afterwards took effect and was duly solemnized), *The* one undivided moiety or half part of the said [*wife, maiden name*], of and in the said messuages, lands, and hereditaments, with their appurtenances, were conveyed to the said [*trustee*], and his heirs, *To the use* of the said [*wife, maiden name*], and her heirs, until the solemnization of the said intended marriage, *And* immediately after the solemnization thereof, *To the use* of the said [*first party*], and his assigns, for the term of his natural life, without impeachment of waste, With remainder, *To the use* of the said [*wife, maiden name*], and her assigns, for the term of her natural life, without impeachment of waste, With remainder, *To the use* of such person or persons as the said [*wife, maiden name*], should in the manner therein mentioned, either by deed or will, and whether sole or covert, direct or appoint; And in default of such direction or appointment, *To the use* of the said [*wife, maiden name*], her heirs and assigns. *And* in the said indenture of lease and settlement, were contained the usual powers of leasing, and of selling, exchanging, and making partition. AND WHEREAS the said [*first party*], and [*wife*], his wife, and the said [*second party*], party hereto, have mutually agreed to effectuate a partition of the said messuages, lands and hereditaments, upon the terms, and in the manner hereinafter mentioned. NOW THESE PRESENTS WITNESS, that the said [*first party*], and [*wife*], his wife, do hereby agree with the said [*second party*], party hereto, who doth hereby agree with the said [*first party*], and [*wife*], his wife, in manner following, that is to say; THAT a partition and division of all and singular the said messuages, lands, and hereditaments into

subject to mortgages.

Settlement of one moiety.

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To the use of first party for life.

Remainder to wife for life.

Remainder as she should appoint.

Remainder to her in fee.

Usual powers to trustee to partition, &c.

Agreement for partition.

Testatum.

Partition to be made by commissioners.

two separate allotments, of equal value, or as nearly so as *circumstances will permit, shall be made, as soon as conveniently may be, by [*commissioner*], of &c., a commissioner nominated by and on behalf of the said [*first party*], and [*wife*], his wife, and [*commissioner*], of &c., a commissioner nominated by and on the behalf of the said [*second party*], party hereto; AND that if the said commissioners should differ in opinion, touching the said intended partition, or the mode of carrying the same into effect, or touching any matter relating thereto, *Then*, and in every such case, the subject matter of every such difference of opinion shall be reduced into writing, and shall be referred to an umpire, to be named by the said [*commissioners*] before they proceed on the said arbitration, or the valuation or arrangement for that purpose; AND that the determination or decision of such umpire, upon the matter or matters so to be referred to him, shall be final, binding, and conclusive, both upon the said commissioners, and upon the parties hereto: AND that when and so soon as such partition or division shall have been made, the said [*commissioners*], or in case of their difference, the said umpire, shall decide which of the said allotments shall be taken in severalty by the said [*first party*], and [*wife*] his wife, and which of the said allotments shall be taken in severalty by the said [*second party*], party hereto: AND that it shall be lawful for the said commissioners, or in case of their difference, the said umpire, to decide and determine whether any, and what sum of money, shall be paid for equality of partition, and by which of the parties such money shall be paid: AND that when it shall have been determined which of the said allotments shall be taken in severalty by the said [*first party*] and [*wife*], his wife, and which of the said allotments shall be taken in severalty by the said [*second party*], party hereto, and whether any and what sum of money shall be paid for equality of partition, and by which of the said parties such money shall be paid; the said parties respectively, and their respective heirs, appointees, or assigns, shall, with all convenient speed, make, do, and execute, all such acts, deeds, or assurances, as the counsel of the said parties respectively, or their respective heirs, appointees, or assigns, shall advise or re-

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

And if they disagree, the decision of their umpire to be final.

Commissioners or umpire to decide what allotment each party shall have;

and the equality of partition money.

Parties to execute mutual conveyances.

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

*quire, for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*first party*], and [*wife*] his wife, with their appurtenances, to the uses, upon and for the trusts, intents and purposes, and with, under, and subject to, the powers, provisoes, declarations, and agreements, in and by the said hereinbefore in part recited indenture of settlement, limited, expressed, or declared of or concerning the said undivided moiety, hereditaments, and premises, thereby granted and released, or as near thereto as the deaths of parties, and other circumstances will allow; *And* for the purpose of conveying and assuring such of the said allotments as shall have been decided in manner aforesaid, to be taken in severalty by the said [*second party*], party hereto, with the appurtenances, unto him the said [*second party*], party hereto, his heirs and assigns, or to such uses, and in such manner, as he or they shall direct or appoint: AND that such provisions shall be made for the payment by the respective parties of their shares of the monies due, or to become due, on the said mortgages respectively, as by the said commissioners, or their umpire, shall in that behalf be directed: AND IT IS HEREBY FURTHER AGREED, that the said [*commissioners*] shall be, and they are hereby authorized, to make a survey of the said estates, and to cause a map or plan to be drawn thereof: AND that the costs, charges, and expenses, of preparing, engrossing, and executing this present agreement, or in any wise relating thereto, and of making such partition or division as aforesaid, and of making such survey, and such map as aforesaid, and all other costs, charges, and expenses incurred, or to be incurred, in or about the said partition or division, or in any wise relating thereto, (*except* the costs, charges, and expenses of the respective conveyances of the allotments to be taken in severalty) shall be paid and borne by the said [*first party*], and [*second party*], party hereto, in equal proportions: AND that the expense of the conveyances of the allotment to be taken in severalty by the said [*first party*], and [*wife*] his wife, shall be borne by the said [*first party*]: AND that the expense of the conveyances *of the allotment to be taken in severalty by the said [*se-*

As to wife's moiety, to uses, &c. of settlement.

And as to second party's moiety, to him in fee.

Commissioners or umpire to decide who shall pay mortgage money.

Commissioners authorized to make a survey, &c.

All costs of partition to be borne equally.

Each party to pay costs of his own conveyance.

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cond party], party hereto, shall be borne by him the said [*second party*], party hereto: AND IT IS HEREBY FURTHER AGREED AND DECLARED, that the said commissioners, or their umpire, shall decide to which of the said parties the custody of the several title deeds relating to the said hereditaments, shall respectively belong, and by whom, and in what proportions, the expenses of any attested copies, or covenants for production of deeds, which may be necessary, shall be borne. IN WITNESS, &c.

PARTITION OF FREEHOLD BY COMMISSIONERS OR UMPIRE, SUBJECT TO MORTGAGES.

Commissioners or umpire to decide who shall have the title deeds.

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AGREEMENT *for effecting a* PARTITION *of* FREEHOLD *and* COPYHOLD *Estates by* TWO COMMISSIONERS, *between a Lady on the eve of Marriage, and her Sister and her Husband;* RELEASE *in fee of the* FREEHOLD *Estates,* COVENANT TO LEVY A FINE *of the married Sister's undivided Moiety, either in the Common Pleas, County Palatine, Welsh County, or Ancient Demesne; And* COVENANT TO SURRENDER *the* COPYHOLD *Estates to Trustees, upon trust to effect the Partition.*

PARTITION OF FREEHOLD AND COPYHOLD.

RELEASE IN FEE, AND COVENANT TO LEVY FINE.

COVENANT TO SURRENDER COPYHOLD.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—, BETWEEN [*first party*], of &c., (spinster), of the first part; [*second party*], of &c., and [*wife*], his wife, of the second part; and [*trustees*], of &c., of the third part.

Parties.

WHEREAS (*a*) the said [*first party*], and [*wife*] the

Recital of seisin

(*a*) If the seisin be in coparcenary, say,

"WHEREAS the said [*first party*], and [*wife*], the wife of the said [*second party*], are the only children and coheirs of [*father*], late of &c., who died in or about the

Recital of coparcenary in freehold and copyhold.

PARTITION OF FREEHOLD AND COPYHOLD.

in possession, under father's will.

wife of the said [*second party*], are tenants in common in fee in possession of the freehold hereditaments, and are tenants in common of the inheritance in possession, according to the custom of the manor of ——, in the county of ——, of the copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered under and by virtue of the last will and testament of their late father, [*testator*], of &c., deceased, bearing date on or about the —— day of ——, 18—, and proved in the Prerogative Court of the Archbishop of Canterbury, on or about the —— day of ——, 18—.

Desire for partition,

AND WHEREAS the said [*first party*] and [*second party*], and [*wife*], his wife, are desirous that a partition should be made of the freehold and copyhold and customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered, with their respective appurtenances: *And* that the divided part which should be taken in lieu of the respective undivided moieties, or equal half parts or shares of the said [*first party*], and the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said freehold and copyhold or customary hereditaments, should be respectively settled in the manner hereinafter mentioned or referred to concerning the same: *And* for carrying the said desire into effect, it hath been agreed that the said [*first party*], and [*second party*], should enter into the covenants hereinafter contained: *And* that the said freehold

and settlement.

Agreement for perfecting same.

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month of ——, 18—, intestate, and a widower, and, as such coheirs, they the said [*first party*], in her own right, and the said [*second party*], and [*wife*] his wife, in the right of the said [*wife*], are seised in coparcenary, of the fee-simple and inheritance in possession, in equal undivided moieties of the freehold hereditaments, and of the inheritance in possession according to the custom of the manor of ——, in the county of ——, of the copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered."

and copyhold or customary hereditaments, should be respectively conveyed and surrendered, To the use of the said [*trustees*], their heirs and assigns, *Upon the trusts* hereinafter declared concerning the same: NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreement, It is hereby, with the privity and approbation of the said [*wife*], (testified by her being a party to, and sealing and delivering these presents), covenanted and agreed, between and by the said [*first party*], and the said [*second party*], as follows, (that is to say): THAT [*commissioner*], of &c., shall be the person to divide on the behalf of the said [*first party*], the *freehold or copyhold or customary hereditaments hereinafter mentioned, and intended to be hereby respectively granted, released, and confirmed, and covenanted to be surrendered; *And* [*other commissioner*], of &c., shall be the person to divide the same hereditaments on the behalf of the said [*second party*] and [*wife*] his wife: AND that with all convenient speed, after the execution of these presents, the same hereditaments shall be divided by the said [*commissioner*], or the person to be appointed in his stead, as hereinafter is mentioned; *And* by the said [*other commissioner*], or the person to be appointed in his stead, as hereinafter is mentioned, into two parts of equal value, or as nearly so as possible, taking into account, on such division, the quantity, quality, and situation of the same hereditaments, and the leases to which the same are subject: THAT if before such division shall have been made as aforesaid, the said [*commissioner*], or any person to be appointed in his stead, as next hereinafter mentioned, shall die, or refuse, or become incapable [to do what may be necessary to be done on his part] to effect such division, Then and so often as the same shall happen, the said [*first party*], whether covert or sole, and notwithstanding her coverture, and after her decease her executors or administrators, shall, within one calendar month after such death, or of such refusal or incapacity to act, appoint some other fit and competent person in his stead, to do what is hereby required to be done by the said [*commissioner*], for effecting the said division: THAT if before such division shall have been made as aforesaid, the said [*other*

PARTITON OF FREEHOLD AND COPYHOLD.

Testatum.

Appointment of commissioners,

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to make partition.

If first party's commissioner die, she to appoint another.

Same as to second party.

PARTITION OF FREEHOLD AND COPYHOLD.

commissioner], or any person to be appointed in his stead, as next hereinafter mentioned, shall die, or refuse, or become incapable [to do what may be necessary to be done on his part] to effect such division; Then, and so often as the same shall happen, the said [*second party*], and [*wife*] his wife, or the survivor of them, or the executors or administrators of such survivor, shall within one calendar month after such death, or of such refusal or incapacity to act, appoint some other fit and competent person in his stead, to do what is hereby required to be done by the said [*other commissioner*], for effecting the said division: THAT when such division shall have been made as aforesaid, the said *[*first party*], her executors or administrators, and the said [*second party*] and [*wife*] his wife, or the survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be, by themselves or their agents, draw lots for the privilege of choosing one of the parts into which the said hereditaments shall be divided; and the successful party shall choose one of the said parts accordingly: AND if the said [*first party*], her executors or administrators, shall be the successful party, the divided part which she or they shall choose, shall be in lieu of the undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments; and the other divided part shall be in lieu of the said undivided moiety, or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said hereditaments: *But* if the said [*second party*], and [*wife*] his wife, or the survivor of them, or the executors or administrators of such survivor, shall be the successful party, Then the divided part which they, he, or she, shall choose, shall be in lieu of the undivided moiety, or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said hereditaments; and the other divided part shall be in lieu of the undivided moiety, or equal half part or share of the said [*first party*] of and in the said hereditaments: THAT if upon such division as aforesaid, the persons making the same shall not be able conveniently to divide the said hereditaments into two parts, exactly equal in value to each other, and shall in consequence award a sum of

Parties to draw lots for priority of choice.

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Allotments to be in lieu of undivided moieties.

Money awarded for equality of partition to be paid in three months.

money to be paid for equality of partition, such sum shall within (*three*) calendar months after the lots shall have been drawn, and such choice made as aforesaid, be paid as follows (that is to say); if the divided part of the greatest value shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*first party*], then the sum which shall be so awarded as aforesaid, shall be paid by the said [*first party*], her heirs, executors, or administrators, to the said [*second party*], his executors, administrators, or assigns; *But* if the divided part of the greatest value shall be taken in lieu of the said undivided moiety, *or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], then the sum which shall be so awarded as aforesaid, shall be paid by the said [*second party*], his executors, administrators, or assigns, to the said [*first party*], her executors, administrators, or assigns: That all the costs and charges of carrying these presents into effect, including the charges of the persons who are to make such division as aforesaid, shall be paid and borne in equal shares by the said [*first party*], her heirs, executors, or administrators, and the said [*second party*], his heirs, executors, or administrators: That all the deeds, evidences, and writings, which may relate solely to the title to any one of the two parts, into which the said hereditaments are to be divided as aforesaid, shall be delivered to the person or persons who shall become entitled to such part: And that all the other deeds, evidences, and writings, which relate to the title of the hereditaments so to be divided as aforesaid, or any of them, shall be deposited or lodged in the hands or custody of some third person, to be mutually approved of by the parties interested; *Upon trust* to produce and shew forth the same from time to time, upon any trial or hearing, or upon the execution of any commission for the examination of witnesses, and upon all other necessary and reasonable occasions, for the purpose of shewing, evidencing, or making out the title to the said hereditaments, or any part or parts thereof, when and so often as occasion shall require, and to permit the same to be from time to time inspected by any person or persons interested in the hereditaments to which the same shall relate; but not to part with the

PARTITION OF FREEHOLD AND COPYHOLD.

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Expenses to be paid equally.

Deeds relating solely to either allotment to go with it.

All other deeds to be deposited with a third person for both parties' benefit.

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same, or any of them, without the consent in writing of all persons beneficially interested therein; AND that, from time to time, and at all times hereafter, it shall be lawful for the persons beneficially interested in the hereditaments to which the last-mentioned deeds, evidences, and writings, or any of them relate, to have free access thereto, and free liberty to inspect the same, at all reasonable times, and at his, her, or their expense to make copies of the same or any of them.

Further testatum.

AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said

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agreement, and in consideration of *the sum of ten shillings, by the said [*trustees*] to each of them, the said [*first party*] and [*second party*], and [*wife*] his wife, paid at or before the sealing and delivery of these presents, the receipts whereof are hereby respectively acknowledged, they,

Release by several parties.

the said [*first party*] and [*second party*], and [*wife*] his wife, according to their respective estates, shares, and interests, but not further or otherwise, *have*, and each and every of them *hath* granted, bargained, sold, released and confirmed; And by these presents *do*, and each and every of them *doth* grant, bargain, sell, release, and confirm unto

(Reference to lease for a year)

the said [*trustees*], (in their actual possession now being, by virtue of a bargain and sale to them thereof made by the said [*first party*] and [*second party*], and [*wife*] his wife, in consideration of five shillings, by indenture bearing date the day next before the day of the date of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession), and to their heirs,

Freehold parcels.

ALL THOSE freehold messuages, lands, tenements, hereditaments, and premises, situate, &c. with their and every of

General words for farms.

their rights, members, and appurtenances; AND all houses, outhouses, edifices, buildings, barns, stables, yards, gardens, orchards, closes of land, meadow and pasture, feedings, woods, underwoods, and the ground and soil thereof, commons, and common of pasture and of turbary, and other commonable rights, hedges, ditches, fences, mounds, ways, paths, waters, watercourses, liberties, privileges, easements, profits, commodities, advantages, and emoluments whatsoever, to the hereditaments hereby released, or otherwise

assured, or intended so to be, or any of them respectively belonging, or in any wise appertaining, or accepted, reputed, deemed, taken, known, held, occupied, or enjoyed, as part, parcel, or member of the same, or any of them respectively; AND the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits thereof, and of every part and parcel thereof; AND all the estate, right, title, interest, trust, property, claim, and demand whatsoever of them the said [*first party*] and [*second party*], and [*wife*] his wife, and of each and every *of [*250] them, in, to, and out of the same premises, and every of them, and every or any part or parcel thereof. TO HAVE AND TO HOLD the said freehold hereditaments, hereby released, or intended so to be, with their, and every of their appurtenances, unto the said [*trustees*], and their heirs for ever; *To the use* of the said [*trustees*], their heirs and assigns, for ever; *Upon* and for the trusts, intents, and purposes, hereinafter declared concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, the said [*second party*], with the privity and approbation of the said [*wife*] his wife, (testified by her being a party to, and sealing and delivering these presents) doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their heirs and assigns, That he, the said [*second party*], and the said [*wife*] his wife, shall and will(*a*) as of —— term last, —— term next, or some other subsequent term, at the request of the said [*trustees*], their heirs or assigns, but at the costs and

PARTITION OF FREEHOLD AND COPYHOLD.

Reversion.

All the estate.

Habendum in fee to trustees.

To the use of them upon trusts after mentioned.

Covenant by second party, that he and his wife will levy a fine *sur conuzance*, &c.

(*a*) If the lands are held in ancient demesne, say,

ANCIENT DEMESNE.

"on or before the —— day of —— next, at the costs and charges of the said [*second party*], acknowledge and levy unto the said [*trustees*] and their heirs, in the court of ancient demesne, within the said liberty of ——, (*or* the said manor of ——), one or more fine or fines *sur conuzance de droit come ceo, &c.* according to the usual course of levying fines of lands and hereditaments within the said liberty (*or* manor) of the undivided moiety of them, the said [*second party*] and [*wife*] his wife, of all that, &c. with the appurtenances, by the names," &c. *as above.*

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charges of the said [*second party*], acknowledge and levy unto the said [*trustees*] and their heirs (*b*), before his Ma-*jesty's justices of the Court of Common Pleas at Westminster, one or more fine or fines *sur conuzance de droit come ceo*, &c. with proclamations (*c*) according to the form of the statute in that behalf made and provided, and to be engrossed and recorded, according to the order and course of fines in such cases used and accustomed, of the undivided moiety of them the said [*second party*] and

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*[*wife*] his wife, of the freehold hereditaments hereinbefore mentioned, and intended to be hereby granted, released, and confirmed, with their rights, members, and appurtenances, [by the names and descriptions of —— messuages, —— cottages, —— toft, —— barns, —— dovecots, —— gardens, —— orchards, —— hundred acres of land,—— hundred acres of meadow, —— hundred acres of pasture, —— hundred acres of wood, and —— acres of furze and heath, with the appurtenances, in ——, or] by such [other] apt, proper, and convenient names, [number of messuages and acres,] quantities, qualities, and other descriptions, as shall be sufficient to comprise the same. *And it is hereby agreed and declared* between and by the parties to these presents, that the grant, re-

Declaration, that the release and fine shall enure,

COUNTY PALATINE.

(*b*) If the lands are in the county palatine of Durham, Lancaster, or Chester, say,

"at the next Grand Session or Assizes to be held for and within the said county palatine of ——, before his Majesty's justices of the same Grand Session or Assizes, one or more fine or fines," &c. *as above.*

WELSH COUNTY.

If the lands are in any of the Welsh counties, say,

"before his Majesty's justice or justices of Great Session for the said county of ——, one or more fine or fines," &c. *as above.*

IRELAND.

If the lands are in Ireland, say,

"at the King's Courts in Dublin, one or more, &c." *ut supra.*

[(*c*) As to cases in which proclamations are necessary to give effect to fines, *vide post*, Vol. 4, p. 158.]

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lease and confirmation hereinbefore contained, *And* the said fine or fines, and all and every other fines or fine, assurance and assurances of the same hereditaments and premises, shall operate and enure *To the use* of the said [*trustees*], their heirs and assigns, *Upon and for the trusts*, intents, and purposes, hereinafter expressed concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance and further performance of the said agreement, the said [*first party*], so far as relates to her undivided moiety or equal half part of and in the copyhold or customary hereditaments hereinafter mentioned, but not further or otherwise, doth hereby for herself, her heirs, executors, and administrators; *And* the said [*second party*], (with the privity and approbation of the said [*wife*] his wife, testified as aforesaid), so far as relates to the undivided moiety or equal half part or share of the said [*second party*] and [*wife*] his wife, in right of the said [*wife*], of and in the same copyhold or customary hereditaments, but not further or otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], and their heirs, *That* they, the said [*first party*] and [*second party*], and [*wife*] his wife, shall and will at the next courts to be respectively held in and for the manor of ——, and the manor of ——, in the said county of ——, and at the joint costs and charges of the said [*first party*] *and [*second party*] respectively, or their respective heirs, executors, or administrators, well and effectually surrender, or cause to be surrendered into the hands of the lords or ladies of the said manors respectively, *To the use* of the said [*trustees*], their heirs and assigns, ALL THOSE &c., [*describe parcels*]. *To hold* the same unto the said [*trustees*], their heirs and assigns, at the will of the lords or ladies of the said manors respectively, according to the respective customs thereof, by the rents and services therefore due and of right accustomed, *Upon* and for the trusts, intents, and purposes hereinafter declared concerning the same. AND *it is hereby agreed and declared* between and by the parties to these presents, that the said [*trustees*], their heirs and assigns, shall stand and be seised of and interested in the said freehold and

to the use of the trustees in fee on the trusts after-mentioned.

Further testatum.

Covenant by first party as to her moiety;

And by second party, with consent of his wife, as to their moiety.

To surrender copyholds.

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To the use of trustees

in fee.

On trusts aftermentioned.

Declaration of trust.

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copyhold, or customary hereditaments and premises hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, with their respective appurtenances, upon and for the trusts, intents, and purposes following, that is to say; UPON TRUST, that they the said [*trustees*] or the survivor of them, or his heirs, do and shall permit and suffer the said hereditaments and premises to be divided agreeably to the covenants or agreements hereinbefore contained: AND in the mean time, and until, in pursuance of the said covenants or agreements, the said hereditaments and premises shall be divided, and the lots shall be drawn, and such choice made as aforesaid, UPON THIS FURTHER TRUST, that the said [*trustees*], or the survivor of them or his heirs, do and shall pay the rents and profits of the said undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments and premises, to, or permit the same to be received by, the person or persons who would for the time being be entitled to the rents and profits of the divided part, which would have been taken in lieu of the same undivided moiety, or equal half part or share, if the intended partition had taken effect agreeably to the terms of these presents: *And* do and shall [*254] *pay the rents and profits of the undivided moiety or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said hereditaments and premises, to, or permit the same to be received by, the person or persons who would for the time being be entitled to the rents and profits of the divided part, which would have been taken in lieu of the said last mentioned undivided moiety, or equal half part or share, if the said intended partition had taken effect, agreeably to the terms of these presents: AND when, in pursuance of the covenants or agreements hereinbefore contained, the said hereditaments and premises shall have been divided, and the lots shall have been drawn, and such choice made as aforesaid, then UPON THE TRUSTS following, that is to say; *As* to the divided part, which shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*first party*], of and in the said hereditaments and premises; UPON TRUST that the said [*trustees*], or the survi-

To permit partition to be made.

And until partition, to permit respective parties to receive rents.

When partition and choice made,

first party's share

to be conveyed

vor of them, or his heirs, do and shall, at the proper costs and charges of the said [*first party*], her heirs, executors, or administrators, convey and surrender the same with the appurtenances, unto and to the use of [*trustees of intended marriage settlement*], of &c., their heirs and assigns, *Upon* and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as shall be expressed and declared of and concerning the same, in and by an indenture intended to bear even date with these presents, and to be made between the said [*first party*] of the first part, [*intended husband*] of &c., of the second part, and the said [*trustees of settlement*], of the third part, (being the settlement intended to be executed previously to the marriage which is about to be solemnized between the said [*intended husband*] and [*first party*]: *And as* to the divided part which shall be taken in lieu of the undivided moiety, or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said hereditaments and premises, UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as the said [*second party*], and [*wife*] *his wife, by any deed or deeds, instrument or instruments, in writing, with or without power of revocation and new appointment, to be by them sealed and delivered in the presence of, and attested by two or more credible witnesses, shall from time to time direct or appoint: *And* in default of, or until such direction or appointment, and so far as the same if incomplete shall not extend; IN TRUST for the said [*second party*], and his assigns, during his life, without impeachment of waste: *And* after his decease, IN TRUST for the said [*wife*] his wife, her heirs and assigns, for ever: PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between all the parties to these presents, that the said [*trustees*] respectively, and their respective heirs, executors, administrators, and assigns, shall be charged and chargeable only for such monies as they respectively shall actually receive by virtue of the trusts hereby reposed in them, notwithstanding his or their, or any or either of their giving or signing, or joining in giv-

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to the trustees of her intended marriage settlement.

Second party's share to be conveyed,

as husband and wife appoint by deed;

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in default of appointment,

for husband for life;

remainder for wife in fee.

Indemnity to trustees.

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ing or signing, any receipt or receipts for the sake of conformity: *And* shall not be answerable or accountable for any banker or other person, with whom or in whose hands any part of the said trust monies shall or may be deposited or lodged for safe custody, or otherwise, in the execution of the trusts hereinbefore contained; nor for any misfortune, loss, or damage, which may happen in the execution of the aforesaid trusts, or in relation thereto, except the same should happen by or through his or their own wilful default respectively; and then, and in that case, each person respectively shall singly and alone be answerable for such loss or damage as shall arise from his or her own default: *And also* that it shall be lawful for the said [*trustees*] respectively, their respective heirs, executors, administrators, and assigns, out of the monies which shall come to their respective hands by virtue of the trusts aforesaid, to retain all costs, charges, damages, expenses, and fees to counsel for advice, which they or any of them shall or may sustain, or expend *in the execution of the aforesaid trusts, or in relation thereunto: AND THE SAID [*first party*], so far as relates to her undivided moiety, or equal half part or share of and in the hereditaments and premises hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and their respective appurtenances, and the right to convey and surrender the same undivided moiety, or equal half part or share, and for the same undivided moiety or equal half part or share, being free from incumbrances, and for the quiet enjoyment, and further assurance thereof, but not further or otherwise; doth hereby for herself, her heirs, executors, and administrators; AND THE SAID [*second party*], so far as relates to the undivided moiety, or equal half part or share of the said [*second party*], and [*wife*] his wife, in right of the said [*wife*], of and in the said hereditaments and premises hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and their respective appurtenances; and the right to convey, and surrender the same undivided moiety, or equal half part or share; and for the same undivided moiety, or equal half part or share, being free from incumbrances, and for the quiet enjoyment and further assurance thereof, but not further or

Trustees to reimburse themselves all costs, &c.

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Covenant for title by first party as to her undivided moiety;

and by second party for himself and wife, for their undivided moiety;

for title.

otherwise, doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees*], their heirs and assigns, in manner following, that is to say; That (for and notwithstanding any act, deed, matter or thing whatsoever, made, done, committed, executed, or suffered by them, the said [*first party*], and [*second party*], and [*wife*] his wife, to the contrary) they the said [*first party*], and [*second party*], and [*wife*] his wife, now at the time of the sealing and delivery of these presents, have in themselves good right, full power, and lawful and absolute authority, to grant, bargain, sell, release, convey, and surrender the said freehold and copyhold, or customary hereditaments and premises, hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, to the uses, and *upon and for the trusts, intents, and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: And likewise, that the hereditaments and premises hereby respectively granted, released, and confirmed, and covenanted to be surrendered, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their rights, members, and appurtenances, shall and lawfully may from time to time, and at all times hereafter, remain, continue, and be, to the several uses, upon the several trusts, and for the several intents and purposes, hereinbefore expressed and declared of and concerning the same; and shall and may be peaceably and quietly had, held, and enjoyed accordingly; without the let, suit, trouble, denial, eviction, ejection, disturbance, molestation, hindrance, interruption, claim, or demand whatsoever, of, from, or by the said [*first party*], and [*second party*], and [*wife*] his wife, any or either of them, or their, any, or either of their heirs, or any person or persons claiming, or to claim, by, from, through, under, or in trust for them, or any or either of them; And free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged, or otherwise by them the said [*first party*], and [*second party*], and [*wife*] his wife, or one of them, their,

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Peaceable enjoyment.

Free from incumbrances.

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or one of their heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all [former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, intails, trusts, wills, statutes merchant, and of the staple, recognizances, judgments, extents, executions, rents, arrears of rent, annuities, legacies, sum and sums of money, yearly payments, forfeitures, re-entries, cause and causes of forfeiture and re-entry, debts of record, debts due to the King's Majesty, and of, from, and against all and singular other] estates, titles, charges, and incumbrances whatsoever, made, done, executed, committed, or suffered by the said [*first party*], and [*second party*], and [*wife*] his wife, or any or either of them, (other than and except as to the said copyhold [*258] hereditaments, the rents, duties, and ser*vices, henceforth to be paid, done, and performed, for or in respect of the same hereditaments) (*a*); AND MOREOVER, that they the said [*first party*], and [*second party*], and [*wife*] his wife, and their heirs, and all and every other person or persons, having, or lawfully claiming, or who shall or may at any time or times hereafter, have, or lawfully claim, any estate, right, title, interest, inheritance, property, or demand whatsoever, either at law or in equity, of, in, to, or out of the said freehold and copyhold, or customary hereditaments and premises, hereby respectively granted, released,

For further assurance.

Exception in limited covenants should be confined to the acts of persons to which the covenants extend.

[(*a*) This precedent exemplifies an inaccuracy which is not of uncommon occurrence, namely, that of introducing as an exception to limited covenants for title and quiet enjoyment, incumbrances to which those covenants do not extend. Thus, it is obviously wrong in a covenant (as in the text) restricted to the acts of the covenantor, to except incumbrances created by an anterior owner; and yet we frequently find old mortgages, leases, and even land-tax referred to in this manner. Where it is intended that the grantee shall take subject to incumbrances not falling within the terms of the vendor's or grantor's limited covenants, and it is thought advisable to notice them in the deed (which it often is not), they should be recited in their proper place, in the deduction of the title, and afterwards shortly referred to in the *Habendum*. In mortgages and other instruments, where the covenants are unrestricted, of course *any* incumbrances may properly be excepted in the covenants.]

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and confirmed, and covenanted to be surrendered, or intended so to be, or of, in, to, or out of any of them, or any part thereof, by, from, under, or in trust for them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request of the said [*trustees*], their heirs or assigns, but at the proper costs and charges of the person or persons at whose instance such request shall be made, make, do, acknowledge, levy, suffer, and execute, or cause to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful acts, things, deeds, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly and absolutely granting, releasing, confirming, surrendering, and assuring the said freehold and copyhold or customary hereditaments and premises, hereby respectively granted, released, and confirmed and covenanted to be surrendered, or intended so to be, to the several uses, upon the trusts, and for the intents and purposes hereinbefore declared concerning the same, or such of them as shall then be capable of taking effect; [be the same by fine, feoffment, common or customary recovery or recoveries, or other matter of record, or not of record, or otherwise howsoever;] As by them the said [*trustees*], or the survivor of them, or his heirs, or any of them, their, or any of their counsel in the law, shall be *reasonably advised or devised and required; So that such [*259] further assurance or assurances, contain or imply in them no further or other covenant or warranty than against the person or persons who shall make and execute the same, his, her, or their heirs, executors, and administrators acts and deeds only; and so that the party or parties, who shall be required to make and execute any such further assurance or assurances, be not compelled, or compellable, for the making or doing thereof, to go or travel from his, her, or their dwelling, or respective dwellings, or usual place or places of abode. IN WITNESS, &c.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

AGREEMENT *for an* EXCHANGE *of* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises, with reference to Commissioners, or their Umpire, to determine the Sum to be paid for Equality of Exchange.*

Parties.

ARTICLES OF AGREEMENT made the —— day of ——, 18—; BETWEEN [*first party*], of &c., of the one part; and [*second party*], of &c., of the other part.

Agreement by first party to deliver abstract.

FIRST, the said [*first party*], for himself, his heirs, executors, and administrators, doth hereby agree with the said [*second party*], his (*a*) heirs, and assigns, that he the said [*first party*], or his (*b*) heirs, shall and will, on or before the —— day of —— next, at his and their own expense, make and deliver to the said [*second party*], his agent or attorney, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*first party*], to

FREEHOLD.

Parcels.

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ALL THAT dwelling-house and garden, situate &c., with the appurtenances (*c*): AND if the coun*sel of the said

To execute conveyance.

LEASEHOLD.

(*a*) If the premises are leasehold, say,

" executors, administrators, and assigns,"

(*b*) " executors or administrators,"

(*c*) If the premises are leasehold, say,

Reference to lease.

" held by the said [*first party*], for the remainder of a term of —— years, granted by an indenture bearing date on or about the —— day of ——, 18—, and made between [*lessor*], of the one part, and [*lessee*], of the other part, subject to the rents, covenants, and conditions therein contained; but the said [*first party*] shall not be required

[*second party*], should be of opinion that the said [*first party*], has a good title to the inheritance in possession

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

to produce the lessor's title†: And if the counsel of the said [*second party*] should be of opinion that the said [*first party*] has a good title to the said dwelling-house and garden, for the remainder of the said term, that he the said [*first party*], and all other necessary parties, on or before the —— day of —— next, on receiving from the said [*second party*], such sum of money, if any, as shall be awarded for equality of exchange, shall and will assign and assure the said dwelling-house and garden to the said [*second party*], for the residue of the said term, free from incumbrances, but subject as aforesaid, in consideration of such money, if any, for equality of exchange, and of a conveyance of the two closes of leasehold land, hereinafter mentioned; in which conveyance shall be contained covenants by the said [*first party*], that, notwithstanding any

Covenants to be contained in assignment.

† *Vide ante*, 46, 165.

Vendor of city corporation lease cannot compel specific performance, unless he produce lessor's title.

It has just been determined by the Court of Exchequer, Gray's Inn Hall, 28th July, 1821, *Purvis* v. *Rayer*, (since reported, 9 Price, 488), Sug. Vend. 295, 6th ed., that the vendor of a leasehold estate cannot compel specific performance without producing the lessor's title; and that the circumstance of the term being described in the agreement as held under a city corporation makes no difference. *Vide ante*, 46. The same doctrine must equally apply to an agreement for an exchange; and therefore the contrary should be expressly mentioned, when it is the intention of the parties.

But the purchaser cannot recover the deposit.

[It should be observed, that though it may be considered as settled by the decision above cited, that the vendor of a leasehold property cannot enforce the performance of the contract against the purchaser without producing his lessor's title, yet, in a late case, Lord *Tenterden* held, at *Nisi Prius*, that the deposit paid on a purchase could not be recovered back from the vendor on this ground. "The cases the other way," said his Lordship, "are only cases in equity; and though it might be true that a vendor on a bill for specific performance could not compel a purchaser to take a lease without shewing the lessor's title, still I shall hold that, in a Court of law, the purchaser cannot recover his deposit on account of such title not being produced, unless the vendor has expressly contracted to furnish his lessor's title. *George* v. *Pritchard*, 1 Ryan & Moody, 417.]

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in fee-simple of the said dwelling-house and garden (*d*), that he, the said [*first party*], or his heirs, and all other necessary parties, on or before the —— day of —— next, on receiving from the said [*second party*], such sum of money, if any, as shall be awarded for equality of exchange (*e*), shall and will, with proper covenants for title, for quiet enjoyment, and for further assurance, and other proper and necessary covenants, execute a proper conveyance of the fee-simple and inheritance in possession, of the said dwelling-house and garden, with the appurtenances, free from incumbrances, unto the said [*second party*], his heirs, appointees, or assigns, in consideration of such money, if any, for equality of exchange, and of a conveyance of the fee-simple and inheritance in possession, free from incumbrances, of and in the two

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act done by the said [*first party*], (or the person under whom he claims), the lease is valid, not forfeited, surrendered, or determined, or become void or voidable; that the said [*first party*] has, or the assigning parties have, good right to assign; that the rent has been paid, and the covenants performed to the time of assigning; for quiet enjoyment during the term, free from incumbrances; and for further assurance: AND ALSO a covenant by the said [*second party*] to pay the rents and perform the covenants and agreements reserved and contained in the same indenture of lease, and to indemnify the said [*first party*] therefrom."

COPYHOLD.

(*d*) If the premises are copyhold of inheritance, say,

"according to the custom of the manor of —— in the county of ——, of which the same premises are holden,"

To surrender,

(*e*) "duly surrender the same according to the custom of the said manor, to the use of the said [*second party*], his heirs or assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due and of right accustomed, but free from all incumbrances whatsoever: AND ALSO execute a deed of covenants for the title, for quiet enjoyment, and for further assurance, and all other proper and necessary covenants,"

and execute deed of covenants.

closes of land, with the appurtenances hereinafter mentioned: AND THE SAID [*second party*], for himself, his heirs, executors, and administrators, doth hereby agree with the said [*first party*], his (*f*) heirs and assigns, that he, the said [*first party*[, or his (*g*) heirs, shall and will, on or before the said —— day of —— next, at his and their own expense, make and deliver to the said [*first *party*], his agent or attorney, a full, complete, and perfect abstract, in the usual manner, of the title of him the said [*second party*], to ALL THOSE two closes of land, situate, &c. with the appurtenances (*h*): AND if the counsel of the

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

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(*f*) If the premises are leasehold, say, LEASEHOLD.

" executors, administrators, and assigns,"

(*g*) " executors or administrators,"

(*h*) If the premises are leasehold, say,

" held by the said [*second party*], for the remainder of a term of —— years, granted by an indenture bearing date on or about the —— day of ——, 18—, and made between [*lessor*], of the one part, and [*lessee*], of the other part, subject to the rents, covenants, and conditions therein contained; but the said [*second party*] shall not be required to produce the lessor's title †: AND if the counsel of the said [*first party*], should be of opinion that the said [*second party*] has a good title to the said two closes of land, for the remainder of the said term, that he the said [*second party*], and all other necessary parties, on or before the —— day of —— next, on receiving from the said [*first party*] such sum of money, if any, as shall be awarded for equality of exchange, shall and will assign and assure the said two closes of land to the said [*first party*], for the residue of the said term, free from incumbrances, but subject as aforesaid, in consideration of such money, if any, paid for equality of exchange, and of a conveyance of the said dwelling-house and garden; in which conveyance shall be contained covenants by the said [*second party*], that notwithstanding any act done by the said [*second party*], (or the person under whom he claims), the

Reference to lease.

To assign.

† *Vide ante*, 261.

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

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said *first party*], should be of opinion that the said [*second party*] has a good title to the inheritance in possession in fee-simple of the said two closes of land (*i*), that he the said [*second party*], or his heirs, and all other necessary parties, on or before the —— day of —— next, on receiving from the said [*first party*] such sum of money, if any, as shall be awarded for equality of exchange (*k*), shall and will, with proper covenants for title, for quiet enjoyment, and for further assurance, and other proper and necessary covenants, execute a proper conveyance of the fee-simple and inheritance in possession of the said two closes of land, with the appurtenances, free from incumbrances, unto the said [*first party*], his heirs, appointees, or assigns, in consideration of such money, if any, for equality of exchange, and of a conveyance of the fee-simple and inheritance in possession, free from incumbrances, of

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lease is valid, not forfeited, surrendered, or determined, or become void or voidable; that the said [*second party*] has, or the assigning parties have, good right to assign; that the rent has been paid, and the covenants performed, to the time of assigning; for quiet enjoyment during the term, free from incumbrances; and for further assurance: AND ALSO a covenant by the said [*first party*] to pay the rents, and perform the covenant and agreements reserved and contained in the same indenture of lease, and to indemnify the said [*second party*] therefrom."

COPYHOLD.

(*i*) If the premises are copyhold of inheritance, say,

" according to the custom of the manor of ——, in the county of ——, of which the same premises are holden,"

(*k*) " duly surrender the same, according to the custom of the said manor, to the use of the said [*first party*], his heirs or assigns, or as he or they shall direct, to be holden at the will of the lord, according to the custom of the said manor, by the rents and services therefore due, and of right accustomed, but free from all incumbrances whatsoever: AND ALSO execute a deed of covenants for the title, for quiet enjoyment, and for further assurance, and all other proper and necessary covenants,"

and in the said dwelling-house and garden, with the appurtenances: AND *it is hereby mutually agreed* by the said parties, that it shall, at the joint expense of both parties, be referred to [*commissioners*], of &c., and in case of their differing in opinion, then to an umpire, to be chosen by them, to decide and determine whether any and what sum of money shall be paid for equality of exchange, by either of the said parties unto the other of them (*m*); AND that it shall be expressly declared in the said conveyances to each of the said parties, that neither *of them shall re- [*265] enter on the lands conveyed in exchange, in consequence of any defect of title (*n*): AND that each of the said parties shall, at the time of executing the said conveyances, deliver to the other the several title deeds in his custody or power relating to the lands conveyed in exchange (*o*): AND that each of the said parties shall pay the costs and charges for

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

Commissioners or umpire to determine equality of exchange money.

No implied warranty.

To deliver title deeds.

Expenses of conveyances.

(*m*) It may be prudent to add clause for appointing new commissioners, *ut ante*, 231.

(*n*) If it be the agreement, instead of the above clause, say,

"AND that there shall be contained in the said conveyances to each of the said parties, the usual clause of re-entry on the lands given in exchange, on eviction from any part of the lands received in exchange."

Eviction clause.

[As to these clauses, and the subject of exchanges in general, *vide post*, Vol. 4, p. 87.]

Warranty on exchange.

In consequence of the implied warranty and right of re-entry which is incident to exchange, it may sometimes be prudent, although it is not usual, for the exchangers to execute covenants for producing the title deeds, mutually received, or for each to retain copies of those given; because, it seems, that when lands received on exchange, &c. are sold, the vendor ought to produce an abstract of the title and the deeds relating to the lands *given*, as well as those *received* in exchange†, as the purchaser might otherwise be evicted from the lands purchased, on account of a defect in the title to the lands given in exchange. [*Vide post*, Vol. 4, p. 87.]

Covenant for production of title deeds given on exchange.

(*o*) If the title deeds relate to lands of greater value, *vide ante*, 85.

[† Unless the lands given in exchange can be proved to have been aliened by the other party.]

EXCHANGE OF FREEHOLD, COPYHOLD, OR LEASEHOLD.

preparing and engrossing the (*p*) *conveyance of the premises received by him in exchange; *And* the costs and charges of any fine, recovery, or assignment of outstanding terms not already assigned to attend the inheritance of the premises given by him in exchange; *And* the fees and charges of his own counsel and solicitor (*q*). IN WITNESS, &c.

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Fines, &c.

Fees of counsel, &c.

COPYHOLD.

(*p*) If the premises are copyhold, say,

"surrender of and deed of covenants relating to the premises received by him in exchange; *And* the costs and charges of any customary recovery of the premises given by him in exchange;"

(*q*) And if it be the agreement of the parties, add *Clause for liquidated damages, ut ante*, 148.

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EXCHANGE.

AGREEMENT *for an* EXCHANGE, *between a Mayor and Corporation and a private Individual, rather specially drawn.*

Parties.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—; BETWEEN the mayor, bailiffs, burgesses, and the commonalty of the town of ——, of the one part; and [A. B.] of &c., of the other part, as follows:

Corporation agree to convey in exchange.

THE said mayor, bailiffs, burgesses, and commonalty, do hereby for themselves and their successors, agree with the said [A. B.], his heirs and assigns, That the said mayor, bailiffs, burgesses, and commonalty, or their successors, shall and will, by proper conveyances and assurances in the law, convey and assure according to their estate, right, and interest therein, or so far as they can or lawfully may, unto and to the use of the said [A. B.], his

heirs and assigns, ALL, &c., (*describe the estate pretty fully*); **which* said ground, land, and soil, is more particularly delineated and described in the plan or ground-plot thereof hereunto annexed, and distinguished by a green colour. AND THE SAID [A. B.] doth hereby for himself, his heirs, executors, and administrators, agree with the said mayor, bailiffs, burgesses, and commonalty, that he the said [A. B.], his heirs or assigns, shall and will, in the conveyance or assurance so to be made to him by the said mayor, bailiffs, burgesses, and commonalty as aforesaid, enter into a proper covenant and agreement for raising, at the costs and charges of the said [A. B.], the said embankment within the space of seven years from the date of such conveyances and assurances, in such manner as shall not be prejudicial to the said town of ——; and for keeping up and maintaining the same at his and their costs and charges, and to promise to repair the same during the space of seven years. PROVIDED ALWAYS, *and it is hereby agreed* between the said mayor, bailiffs, burgesses, and commonalty, and the said [A. B.], that nothing herein, or in the said intended conveyances and assurances to be contained, shall extend to, or be deemed or construed to extend to a warranty, covenant, or undertaking by the said mayor, bailiffs, burgesses, and commonalty, of or for their title to the said ground, &c. so agreed to be conveyed by them unto and to the use of the said [A. B.], his heirs and assigns as aforesaid, or any part thereof, or to entitle the said [A. B.], his heirs, executors, administrators, or assigns, to bring, commence, sue forth, or prosecute any action, suit, claim, or demand whatsoever, against them the said mayor, bailiffs, burgesses, and commonalty, or their successors, for, upon, by reason, or on account of his the said [A. B.], his heirs or assigns, being evicted of or from, or being disturbed in the possession of the said ground, &c. or any part thereof, by any person or persons whomsoever, *except* the said mayor, bailiffs, burgesses, or commonalty. AND THE SAID [A. B.], for himself, his heirs, executors, and administrators, doth hereby agree with the *mayor, bailiffs, burgesses, and commonalty of the said town of ——, That he, the said [A. B.], his heirs or assigns, shall and will,

EXCHANGE.

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Reference to plan.

Agreement with the corporation to make an embankment, and keep it in repair.

Proviso, that corporation shall not be considered as warranting the title.

Covenant to convey to corporation.

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EXCHANGE.

Parcels.

as soon as conveniently may be, by proper conveyances and assurances in the law, grant and convey unto the said mayor, bailiffs, burgesses, and commonalty, and their successors, ALL THAT, &c. (*describe the estate*); AND THE SAID mayor, bailiffs, burgesses, and commonalty, for themselves and their successors, do further agree with the said [A. B.], his heirs and assigns, by these presents, That if the said [A. B.], his heirs or assigns, should at any time hereafter apply for a proper license from the crown, or for an act of Parliament for a grant or confirmation to him the said [A. B.], his heirs or assigns, of the said ground, &c. so agreed to be conveyed by them the said mayor, bailiffs, burgesses, and commonalty of the said town of ——, unto and to the use of the said [A. B.], his heirs and assigns as aforesaid, or any part thereof, Then and in such case the said mayor, bailiffs, burgesses, and commonalty, shall and will, upon the request of the said [A. B.], his heirs or assigns, join and concur with the said [A. B.], his heirs or assigns, in such application, and testify their consent thereto, and do all such other reasonable acts and deeds for facilitating and promoting the success of such application, and assisting the said [A. B.], his heirs or assigns therein, as by the said [A. B.], his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised, or devised and required. AND *it is hereby further agreed* between and by the said mayor, bailiffs, burgesses, and commonalty, and the said [A. B.], that the said [A. B.], his heirs, executors, administrators, or assigns, shall pay all fees, charges, duties, and expenses, as well attending the preparing and engrossing these presents, as the preparing, settling, and engrossing the several conveyances and assurances so agreed to be made and executed by the said mayor, bailiffs, burgesses, and commonalty, and by the said [A. B.] respectively, as aforesaid, and the obtaining such license from the crown, and act of Parliament, as aforesaid. IN WITNESS whereof, the said mayor, bailiffs, burgesses, and commonalty have hereunto set their seal, and the said [A. B.] hath hereunto set his hand and seal, the day and year first above written.

Covenant by corporation, to concur with [A. B.] in applying for king's license, or act of Parliament, to confirm exchange.

Agreement respecting expenses.

AGREEMENT *to apply for a Private Act of Parliament for effectuating an* EXCHANGE *of* ADVOWSONS *between a Bishop, Patron in right of his Episcopal See, and a Lay Patron.*

PRIVATE ACT TO EXCHANGE ADVOWSON WITH A BISHOP.

ARTICLES OF AGREEMENT made the —— day of ——, in the year of our Lord, 18—, BETWEEN the Right Reverend Father in God, [*bishop*], Lord Bishop of ——, of the one part; and [A. B.], of &c., of the other part.

Parties.

WHEREAS the said Lord Bishop of ——, in right of his episcopal see, is seised of the advowson, or right of patronage and presentation of, in, and to the rectory and parish church of [A.], in the county of ——: AND the said [A. B.] is seised in fee-simple of the advowson, or right of patronage and presentation of, in, and to the rectory and parish church of [B.] in the county of ——: AND the said rectory of [B.] is of greater value than the said rectory of [A.]; but in consequence of the vicinity of the said parish of [A.] to the principal residence and estates of the said [A. B.], he is desirous of obtaining the said advowson of the said rectory of [A.] in exchange for the said rectory of [B.]; and the said Lord Bishop of —— has consented to such exchange; but the same cannot be effected without the aid and authority of Parliament (*a*): NOW THEREFORE the said Lord Bishop of —— *doth hereby for himself, his heirs, executors, and admi-

Recital—of seisin of bishop in right of see;

of [A. B.] in fee;

and his desire for exchange.

Agreement by bishop to per-

(*a*) The necessity of an act of Parliament in this case is evident; because all alienations by ecclesiastical persons, of property belonging to them in their ecclesiastical capacity, except leases for twenty-one years, or three lives, are declared void, by 1 El. c. 19; 13 El. c. 10; 14 El. c. 11; 18 El. c. 11; 1 Jac. I. c. 3. *Et vide ante*, 63.

PRIVATE ACT TO EXCHANGE ADVOWSON WITH A BISHOP.

nistrators, covenant and agree with the said [A. B.], his heirs and assigns, that it shall be lawful for the said [A. B.], his heirs or assigns, at his or their own costs and charges, at any time in the next session of Parliament, to apply for a private act of the legislature for the purpose of vesting and settling the said advowson of the said rectory and parish church of [B.] in and upon the said Lord Bishop and his successors for ever, in lieu of and in exchange for the said advowson of the rectory and parish church of [A.]; AND for vesting and settling the said advowson of the rectory and parish church of [A.] in and upon the said [A. B.], his heirs and assigns for ever; *With* cross eviction and general saving clauses; *And* any other usual or proper clauses and provisions which Parliament may permit: AND ALSO, that he the said Lord Bishop shall and will sign the petition for the said private act, and do every other act and thing which may be necessary on his part to procure the same to be passed into a law, in the next session of Parliament. AND THE SAID [A. B.] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said Lord Bishop, his executors and administrators, that he the said [A. B.] shall and will in due time prepare and sign the said petition for the said act of Parliament, and do every other previous and subsequent act and thing which may be necessary on his part, to procure the same to be passed into a law, in the next session of Parliament: AND ALSO shall and will bear, pay, and discharge the costs and charges for these presents, and a duplicate hereof, and all the costs, charges, and expenses in any manner attending the soliciting, passing, and printing the said act, and every other expense relating thereto; AND therefrom, and from every part thereof respectively, save, defend, and keep harmless the said Lord Bishop, his executors and administrators. IN WITNESS, &c.

mit [A. B.] to apply for private act,

For vesting the advowson of [B.] in the bishop.

And for vesting the advowson of [A.] in [A. B.]

With eviction, &c. clauses.

And bishop to consent thereto.

Agreement by [A. B.] to prepare petition, &c.

and pay all costs,

and indemnify the bishop therefrom.

AGREEMENT *for* ENFRANCHISEMENT *of Copyhold Premises.*

ENFRANCHISEMENT.

ARTICLES OF AGREEMENT made and entered into, this —— day of ——, 18—, BETWEEN [*lord*], of &c., esquire, lord of the manor of ——, in the county of ——; and seised of an estate of inheritance in fee-simple in the same manor, of the one part; and [*tenant*], of &c., one of the copyhold tenants of the said manor, of the other part. Parties.

FIRST, the said [*lord*], for himself, his heirs, executors, and administrators, doth agree with the said [*tenant*] to sell to him the fee-simple and inheritance (*a*), of and in ALL THAT messuage, &c. with the commons and commonable rights (*b*), privileges, and appurtenances, thereto Agreement by lord to enfranchise. Parcels.

(*a*) A lord *pro tempore* can only enfranchise for his own time: but under an express power, or, as it seems, under the usual powers of sale and exchange, tenants for life of manors in strict settlement may enfranchise in fee. *Dominus pro tempore.*

(*b*) Immediately on the lands being enfranchised in fee, they become severed from the manor, and held of the lord above, under the same tenure and services as the former or mesne lord held; therefore, all rights and privileges annexed to the copyholder's estate, as such, must be done away; as the estate by copy, to which they attached, has ceased to exist: thus, if a copyholder has common of pasture or estovers in right of his copyhold, and the copyhold be enfranchised, the common is gone, since the copyhold is gone in right of which it was claimed. *Dawson* v. *Hunter*, Noy, 136. As the estate is no longer copyhold, or even held of the manor, all customs relative to copyholds within the manor must fail as to the premises enfranchised. Such commonage will not pass by the words "*with the appurtenances,*" in the deed of enfranchisement; and it cannot be continued without special and express words. *Marsham* v. *Hunter*, Cro. Jac. 253; Yelv. 189. But equity will, where it appears to have been the Enfranchisement extinguishes common, unless expressly granted.

ENFRANCHISEMENT.

belonging or appertaining, situate, &c.; now held for an estate of inheritance (*c*) by the said [*tenant*], by copy of court roll, according to the custom of the said manor, free from incumbrances, and absolutely enfranchised and discharged from all manner of rents, fines, heriots, fealty, suits, and services whatsoever, at or for the price or sum of —— pounds: AND that he the said [*lord*], shall within *(one)* month from the date hereof, at his own expense, make and deliver to the said [*tenant*], a full and perfect abstract of the title of him the said [*lord*], in the usual manner, to the fee-simple and inheritance of the said manor: AND ALSO that the said [*lord*], or his heirs, and all other necessary parties, shall, within *(two)* months from the date hereof, on receiving the said purchase money, at the costs and charges of the said [*tenant*], execute a proper conveyance, with the usual covenants for the title, for quiet enjoyment, and for further assurance, for conveying, and assuring the fee-simple and inheritance of the said messuage, &c. with the commons and commonable rights, privileges, and appurtenances thereto belonging and appertaining, free from incumbrances, and enfranchised as aforesaid, unto the said [*te*nant*], his heirs and assigns, or as he or they shall direct: AND ALSO that the said [*lord*], shall, at his own costs and charges, at the execution of the said conveyance, deliver unto the said

To deliver abstract.

To execute conveyance.

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To deliver attested copies,

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intention of the parties that it should be preserved, decree its continuance, although it would be extinct at law. *Styant* v. *Staker*, 2 Vern. 250; 1 Watk. Cop. [369]; Gilb. Ten. 224, 441; Com. Dig. *Copyhold*, (K. 6); 6 Vin. Abr. 214, 215; 1 Eq. Ca. Abr. 104, pl. 10.

Enfranchisement to particular tenant, enures to remainder-man.

(*c*) If the copyholder have only a particular estate in the premises, and he take a conveyance of the freehold in fee, it shall be an absolute enfranchisement; the copyhold tenure shall be extinct for ever. But the enfranchisement shall be for the benefit of those in remainder, who would have taken the copyhold interest, had the enfranchisement never taken place, as well as for that of himself; and a Court of equity will, accordingly, direct a conveyance from the heirs at law of the particular tenant to him in remainder, on his paying a proportionate part of the consideration advanced for the enfranchisement. *Winne* v. *Cookes*, 1 Bro. Ch. Ca. 517; 1 Watk. Cop. [364]. *Et vide* Scriven on Copyholds, 616, 2d ed.

ENFRANCHISEMENT.

[*tenant*], true and attested copies of the several title deeds, evidences, and writings, concerning the said premises; and enter into the usual covenant, to be prepared by and at the expense of the said [*lord*], for producing the originals, at the costs and charges of the said [*tenant*], his heirs or assigns; and to permit him and them, from time to time, to take or have other true and attested copies thereof, at his or their own costs and charges; but such covenant, nevertheless, to be void, if the said [*lord*] should afterwards sell the said manor, or any part thereof, and deliver the same deeds and writings to the purchaser thereof, and procure such purchaser to enter into the same, or the like covenants: AND ALSO, that any fine, recovery, or assignment of attendant terms, not already assigned to attend the inheritance, which may be necessary on the conveyance of the said premises, shall be prepared by and at the costs and charges of the said [*lord*]. AND THE SAID [*tenant*], for himself, his heirs, executors, and administrators, doth agree to pay the said sum of [*purchase money*], unto the said [*lord*], on the execution of the said conveyance. AND *it is further agreed*, that each of the said parties shall pay the fees and charges of his own counsel and solicitor. (*If it be the agreement, add Clause, time to be the essence of the contract, and for liquidated damages, ut ante*, 158, 148.) IN WITNESS, &c.

and covenant for their production.

To pay for fines, &c.

Agreement by tenant to pay purchase money.

Each party to pay his own counsel, &c.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

AGREEMENT *by an original Lessor to* BUILD *Part of Premises destroyed by Fire, in consideration of a certain Sum paid to him by an Underlessee:* RELEASE *from original Lessor to Lessee, and from Lessee to Underlessee, of the Covenants of the respective Leases, so far as they relate to the Buildings not to be re-erected; and* DEFEAZANCES *reviving the Conditions of the Leases, which were partially dispensed with by the Releases.*

THIS INDENTURE, made the —— day of ——, 18—,

Parties.

BETWEEN [*lessor*], of &c., of the first part, [*lessee*], of &c., of the second part, and [*underlessee*], of &c., of the third part: WHEREAS by indenture of lease, bearing date on or about the —— day of ——, 17—, and made between the said [*lessor*] of the one part, and the said [*lessee*] of the other part, for the considerations therein mentioned, the said [*lessor*] did demise unto the said [*lessee*], *All that* manor, or reputed manor, called ——; *And all that* messuage or mansion-house, with the coach-house, stable, yards, gardens, and orchards thereto belonging; *And also all that* messuage, tenement, or farm, adjoining to the said first mentioned messuage or mansion house, and together therewith, then in the possession of [*tenant*], and commonly called or known by the name of —— Farm; the said premises being situate, lying, and being, in the parishes of ——, or one of them, in the county of ——; *Together* with all and singular the yards, gardens, orchard, backsides, barns, stables, sheep-houses, granaries, cow-houses, outhouses, edifices, and buildings; *And also all those* several closes, pieces, or parcels of *arable land, ley, meadow, pasture, wood, and wood ground, lying and being in —— aforesaid, or one of them, to the said secondly mentioned messuage, tenement, or farm-house belonging and

Recital of original lease.

Parcels.

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therewith then and theretofore usually held, used, occupied, and enjoyed, and thereinafter particularly mentioned and described; *And all* other lands, grounds, tenements, and hereditaments in the said parishes of ——, or either of them, or elsewhere near adjoining, then in the occupation of the said [*tenant*] as tenant to the said [*lessor*] (*except* as therein is excepted): *To hold* the same unto the said [*lessee*], his executors, administrators, and assigns, from the —— day of —— then next, for the term of forty years; At the yearly rent of —— pounds, payable half yearly, as therein mentioned; *and also* for every acre of the meadow or pasture ground he the said [*lessee*], his executors, administrators, or assigns, should ear, plough, dig up, or convert into tillage, the yearly sum of (*five*) pounds, payable as therein mentioned: *And subject* to several covenants in the said indenture of lease contained; *Among* which the said [*lessee*] did for himself, his heirs, executors, administrators, or assigns, covenant with the said [*lessor*], his heirs and assigns, that he the said [*lessee*], his executors, administrators, or assigns, should, at his or their own proper costs and charges, from time to time, and at all times during the continuance of the said demise, well and sufficiently repair, amend, support, sustain, maintain, scour, empty, cleanse, preserve, and keep in repair, the said two several messuages or tenements, and all and singular the outhouses, edifices, buildings, barns, stables, sheep-houses, granaries, cow-houses, gates, pales, rails, stiles, hedges, ditches, and fences, belonging to the said thereby demised premises, he the said [*lessor*], his heirs or assigns, upon reasonable request and timely notice to him or them made and given in writing, finding and allowing on the said premises, or within five miles' distance thereof (after the sum of —— hundred pounds should have been laid out and expended in repairing the said messuages or tenements, and the outbuildings thereto belonging, in manner therein mentioned, and which hath since been done accordingly,) suf*ficient and necessary rough timber on the stem for the doing thereof; (that is to say), so far as concerned or related to the said demised premises as they then stood, but not as to any new erections, buildings, or additions, which should be erected, built, or made thereon

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Habendum.

Reddendum.

Covenants by lessee to repair.

Lessor allowing rough timber.

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TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

or thereto (such rough timber to be cut down and carried to the said thereby demised premises at the charges of the said [*lessee*], his executors, administrators, or assigns); and that he the said [*lessee*], his executors, administrators, or assigns, the said demised premises so repaired, amended, and kept in repair as aforesaid, at the end, expiration, or other sooner determination of the said lease, should leave and yield up into the hands and quiet possession of the said [*lessor*], his heirs or assigns: *And also subject* to the conditions therein contained, such conditions being to the same effect as the conditions contained in the defeazance hereinafter inserted on the part of the said [*lessee*], his executors, administrators, and assigns: *And* in which said indenture of lease is contained a covenant on the part of the said [*lessor*], his heirs, executors, administrators, and assigns, that he the said [*lessor*], his heirs or assigns, should from time to time, and at all times, (after the said sum of —— hundred pounds should have been laid out and expended in manner therein mentioned), during the continuance of the said demise, at seasonable times for cutting timber, find, provide, and allow unto the said [*lessee*], his executors, administrators, or assigns, on the premises thereby leased, or within five miles' distance therefrom, on reasonable notice in writing for that purpose, all necessary and sufficient rough timber on the stem for the repairing and amending thereof (that is to say), so far as concerned the said demised premises as they then stood, but not for the making, repairing, or amending of any new erections, buildings, or additions, which should or might be erected, built, or made thereon or thereto; the said timber to be cut and carried to the said thereby demised premises at the charges of the said [*lessee*], his executors, administrators, or assigns. AND WHEREAS by indenture of lease, bearng date on or about the —— day of ——, 18—, and made between the said [*lessee*] of the one part, and the said *[*underlessee*], of the other part, the said [*lessee*], for the considerations therein mentioned, did demise and lease unto the said [*underlessee*], *All that* the said manor or reputed manor, messuage, or mansion-house, coach-house, stable, yards, gardens, orchard, backsides, barn, stable, granaries, cowhouses, outhouses, edifices, and buildings,

Conditions.

Covenant by lessor to allow rough timber.

Recital of underlease.

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Parcels.

closes, pieces or parcels of arable land, ley, meadow, pasture, wood and wood-ground, by the same or a like description as hereinbefore contained; *And all* other lands, grounds, tenements, and hereditaments, in the said parishes of ——, or either of them, or elsewhere near adjoining, then late in the occupation of the said [*tenant*], but then or late in the occupation of the said [*lessee*] (*Except* as in the now recited indenture of lease is excepted): *To hold* the same unto the said [*underlessee*], his executors, administrators, and assigns, from the feast of the Annunciation of the blessed Virgin Mary then last, for the term of —— years, and one half of another year wanting one day: *At* the yearly rent of —— hundred pounds, payable half yearly as therein mentioned, and for the last half year wanting one day, the rent of —— pounds; *And also* for every acre of the meadow or pasture ground which he the said [*underlessee*], his executors, administrators, or assigns, should ear, plough, dig up, or convert into tillage, the yearly sum of (*five*) pounds, payable as in the same indenture of lease is mentioned: *And subject* to several covenants in the same indenture contained on the part of the said [*underlessee*], his heirs, executors, administrators, or assigns; *Among* which are covenants to the same purport or effect as the covenants hereinbefore recited to be contained on the part of the said [*lessee*], his executors, administrators, and assigns, in the said recited indenture of lease of the —— day of ——, 17—; *And also subject* to the conditions therein contained, such conditions being to the same effect as the conditions contained in the defeazance hereinafter inserted on the part of the said [*underlessee*], his executors, administrators, and assigns: *And* in the which said indenture of lease of the —— day of ——, 18—, is contained a covenant on the part of the said [*underlessor*], his executors, administrators, and assigns, to the same purport or effect as the covenant herein-before recited to be contained in the said *recited indenture of lease of the —— day of ——, 17—, on the part of the said [*lessor*], his heirs, executors, administrators, and assigns. And whereas a barn, wood-house, cow-house, and shed, part of the premises hereinbefore recited to have been demised by the said [*lessor*] to the said [*lessee*], and by him demised to the said [*under-*

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE RRVIVING CONDITION.

Habendum.

Reddendum.

Covenants by lessee.

Conditions.

Covenants by lessor.

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Recital, part of premises was destroyed by fire.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

lessee], were, in or about the month of ——, 18—, partly destroyed and consumed by fire; *And* it hath been agreed by and between the said parties to these presents, that the barn and part of the shed, so destroyed by fire, shall be rebuilt, without rebuilding at any time, during either of the said terms, the wood-house, cow-house, and the remaining part of the shed; *And* thereupon it hath been agreed, that the several covenants, agreements, releases, and conditions, hereinafter contained, shall be respectively entered into, given, and revived. AND WHEREAS the said [*lessor*] hath contracted and agreed with the said [*underlessee*], to rebuild the said barn and part of the shed so destroyed by fire as aforesaid, in the manner hereinafter particularly mentioned, on receiving from the said [*underlessee*], the sum of —— hundred pounds, being the sum which he hath received from the —— fire office, on account of the damage occasioned by the said fire. NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of —— hundred pounds, of lawful money of Great Britain and Ireland, to the said [*lessor*] paid by the said [*underlessee*], at or before the sealing and delivery of these presents, the receipt of which said sum of —— hundred pounds he the said [*lessor*] doth hereby acknowledge, and from the same and every part thereof, doth release and discharge the said [*underlessee*], his heirs, executors, administrators and assigns, he the said [*lessor*] doth hereby, for himself, his heirs, executors, and administrators, covenant and agree with the said [*underlessee*], his executors, administrators, and assigns, THAT he the said [*lessor*], his executors or administrators, shall or will, within the space or time of (*six*) calendar months, from the day of the date of these presents, erect, build, and completely cover in and finish, the barn and cattle shed, *set forth in the schedule hereunder written; AND ALSO do, perform, and execute, or cause to be done, performed, and executed, all and singular the works also mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good, workmanlike, substantial manner: AND ALSO shall and will find and provide such good, proper, and sufficient mate-

part only of which intended to be rebuilt.

Recital of agreement by lessor to rebuild for a certain sum.

Agreement to build outhouses,

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and find materials.

rials of all kinds whatsoever, as, together with, and in addition to the materials not consumed by the said fire, shall be proper and sufficient for erecting the said barn and cattle-shed, and completely finishing the said works, buildings, and erections. And *it is hereby declared and agreed* by and between the said [*lessor*] and the said [*underlessee*], that in case he the said [*underlessee*], his executors, administrators, or assigns, should direct any more work to be done in or about the said buildings and premises than is contained in the schedule hereunder written, then and in such case the said [*underlessee*], his executors, administrators, or assigns, shall pay or cause to be paid unto the said [*lessor*], his executors, administrators, or assigns, so much money as such extra work, and the materials used therein, shall cost or amount unto, any thing hereinbefore contained to the contrary notwithstanding: And *it is hereby declared and agreed*, by and between the said [*lessor*] and [*underlessee*], that if any dispute or difference should happen or be made between them touching or concerning the said edifices and buildings hereby covenanted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work (if any) as aforesaid, Then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the said [*lessor*], his executors, administrators, or assigns, another by the said [*underlessee*], his executors, administrators, or assigns, and the third to be chosen by the said persons so to be named by each of them the said [*lessor*] and [*underlessee*], and their respective executors, administrators, and assigns, jointly, immediately, or within ten days after notice of such dispute or difference. And each of *them the said [*lessor*] and the said [*underlessee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the other of them, his executors and administrators, that they the said [*lessor*] and [*underlessee*] respectively, and their respective executors or administrators, shall and will severally stand to, abide, perform, and keep, the award and determination of the said three persons so to be chosen, or of any two of them,

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Additional work to be paid for.

Agreement to refer disputes to arbitration.

Covenant to abide by award.

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TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

touching the said several matters and things so to be referred to them as aforesaid; So as the same determination be made in writing, under the hands and seals of the said arbitrators, or some two of them, within one calendar month next after such reference. AND THIS INDENTURE FURTHER WITNESSETH, that, for the considerations aforesaid, he the said [*lessor*] *hath* remised, released, and quit claimed; *and* by these presents *doth* remise, release, and quit claim, the said [*lessee*], his heirs, executors, administrators, and assigns, of and from the said recited covenants of him the said [*lessee*], in the said indenture of lease, of the —— day of ——, 17—, contained; *And also* of and from all and all manner of actions, causes of actions, suits, debts, sums of money, contracts, damages, judgments, executions, claims, and demands whatsoever, in law and equity, which against the said [*lessee*], his heirs, executors, administrators, and assigns, he the said [*lessor*] ever had, now hath, or which he, his heirs or assigns, hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, *So* far only as the same covenant and other matters relate to or concern the repairing, amending, supporting, sustaining, maintaining, preserving, keeping, rebuilding, leaving, and yielding up in repair, the said wood-house and cow-house, and shed, and that part of the said shed so destroyed by fire as aforesaid, and which is not intended to be rebuilt as aforesaid. AND THE SAID [*lessee*], for the considerations aforesaid, *hath* remised, released, and quit claimed; *and* by these presents *doth* remise, &c., *the said [*lessor*], his heirs and assigns, of and from the said recited covenant of him the said [*lessor*], contained in the said recited indenture of lease, of the —— day of ——, 17—; *And also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, damages, judgments, executions, claims, and demands whatsoever, in law and equity, which against him the said [*lessor*], his heirs, executors, administrators, and assigns, he the said [*lessee*], his executors, administrators, or assigns, ever had, now hath, or which he or they hereafter can, shall, or may have, for, upon, or by reason

Release of covenants by original lessor, so far as they relate to buildings not to be re-erected.

Release of covenants by original lessee, so far as they relate to buildings not to be re-erected.

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of any matter, cause, or thing whatsoever, so far only as the same covenants and other matters relate to or concern the finding, providing, and allowing, unto the said [*lessee*], his executors, administrators, or assigns, rough timber for building, repairing, and amending, the said wood-house and cow-house, and that part of the shed which has been so destroyed by fire as aforesaid. AND THE SAID (*a*) [*lessee*], doth by these presents, for himself, his executors, administrators, and assigns, grant unto the said [*lessor*], his heirs, and assigns, That in case the said yearly rent of —— hundred pounds, reserved in and by the said recited indenture of lease, of the —— day of ——, 17—, or any part thereof, or the said additional yearly rent of (*five*) pounds, (if any such should happen to be or become payable) or any part thereof should be behind or unpaid by the space of twenty-one days next over or after either of the days of payment whereon the same is, or ought to be paid, and the same rent should be lawfully demanded upon, or at any time after the expiration of the said twenty-one days, and not *paid when demanded; *Or* if breach or default should hereafter happen to be made, in all or any of the covenants or agreements in the said recited indenture of lease contained on the part and behalf of the said [*lessee*], his executors, administrators, and assigns, to be observed and performed (except as hereinbefore is mentioned), *Then* and in either of the said cases, it shall be lawful for the said [*lessor*], his heirs or assigns, into the premises demised by the said first recited indenture of lease, or any part thereof in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate and estates, and the said

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Defeazance, reviving condition of original lease.

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(*a*) As the condition in the original lease embraces non-performance of the covenants, &c.; and as the covenants are partially released by this deed, whereby part of the condition is dispensed with; and as, according to the principle established by *Dumpor's* case, 4 Co. 119, a dispensation of a condition in part is a dispensation in the whole, the condition should therefore be revived; otherwise the lessor would not have power to re-enter on non-payment of the rent, or non-performance of the covenants. [*Vide post*, Vol. 4, pp. 55, 316.]

Condition dispensed with in part, is dispensed with in whole.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

[*lessee*], his executors, administrators, and assigns, and all other the tenants and occupiers of the same, thence to expel and remove, any thing herein or in the said first recited indenture of lease contained to the contrary thereof in any wise notwithstanding. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, he the said [*underlessor*] *hath* remised, released, and quit claimed, *and* by these presents *doth* remise, release, and quit claim the said [*underlessee*], his heirs, executors, administrators, and assigns, of and from the covenants of him the said [*underlessee*] in the said recited indenture of lease, of the —— day of ——, 18—; *and also* of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, contracts, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which against the said [*underlessee*], his heirs, executors, administrators, and assigns, he the said [*underlessor*] ever had, now hath, or which he, his executors, administrators, or assigns, hereafter can, shall, or may have, for, upon, or by reason of any matter, cause, or thing whatsoever, so far only as the same covenants and other matters relate to or concern the repairing, amending, supporting, sustaining, maintaining, preserving, keeping, rebuilding, leaving, and yielding up in *repair, the said wood-house and cow-house, and that part of the said shed so destroyed by fire as aforesaid, which is not to be rebuilt. AND THE SAID [*underlessee*], for the same considerations aforesaid, *hath* remised, released, and quit claimed, *and* by these presents *doth* remise, &c., the said [*underlessor*], his heirs, executors, administrators, and assigns, of and from the covenant of him the said [*underlessor*], contained in the said recited indenture of lease, of the —— day of ——, 18—; *and also* of and from all and all manner of actions, causes of actions, suits, debts, sums of money, contracts, damages, judgments, extents, executions, claims, and demands whatsoever, in law and equity, which, against him the said [*underlessor*], his heirs, executors, administrators, and assigns, he the said [*underlessee*], his executors, administrators, or assigns, ever had, now hath, or which he or they hereafter can, shall, or may have, for, upon, or by

Release of covenants by underlessor, so far as they relate to buildings not to be re-erected.

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Release of covenants by underlessee, so far as they relate to buildings not to be re-erected.

reason of any matter, cause, or thing whatsoever, so far only as the same covenants and other matters relate to or concern the finding, providing, and allowing, unto the said [*underlessee*], his executors, administrators, or assigns, rough timber for building, repairing, and amending, the said wood-house and cow-house, and that part of the said shed, which has been so destroyed by fire as aforesaid, and which is not intended to be rebuilt as aforesaid. AND THE SAID [*underlessee*] doth by these presents, for himself, his executors, administrators, and assigns, grant unto the said [*underlessor*], his executors, administrators, and assigns, That in case the said yearly rent of —— hundred pounds, reserved in and by the said recited indenture of lease, of the —— day of ——, 18—, or any part thereof, or the said additional yearly rent of (*five*) pounds an acre, (if any such should happen to be or become payable), or any part thereof, should be behind or unpaid by the space of twenty-one days next over or after either of the days of payment whereon the same is or ought to be paid, and the same rent should be lawfully demanded, upon or at any time after the expiration of the said twenty-one days, and not paid when demanded; *Or* if breach or default should hereafter happen to be *made in all or any of the covenants and agreements in the said last-mentioned indenture of lease contained on the part and behalf of the said [*underlessee*], his executors, administrators, and assigns, to be observed and performed, (except as hereinbefore is mentioned) *Then*, and in either of the said cases, it shall be lawful for the said [*underlessor*], his executors, administrators, or assigns, into the said premises by the same indenture of lease demised, or any part thereof in the name of the whole, wholly to re-enter, and the same to have again, retain, repossess, and enjoy, as in his and their first and former estate, and the said [*underlessee*], his executors, administrators, and assigns, and all other the tenants and occupiers of the same, thence to expel and remove, any thing herein or in the said last-mentioned indenture of lease contained to the contrary thereof in any wise notwithstanding. AND *it is hereby agreed* that the new barn and cattle-shed, to be built or rebuilt, pursuant to the covenant hereinbefore

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

Defeazance, reviving condition by underlessee.

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New barn, &c. to be deemed a barn, &c. within the scope of covenants in lease.

TO BUILD; PARTIAL RELEASE OF COVENANT; AND DEFEAZANCE REVIVING CONDITION.

contained on the part of the said [*lessor*], shall be and be considered as a barn and shed, within the scope and compass of the several covenants contained in the said several indentures of lease, and the condition introduced into these presents (*a*). IN WITNESS, &c.

[(*a*) This seems to be quite an unnecessary addition.]

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TO PERMIT OBSTRUCTION TO ANCIENT LIGHTS.

AGREEMENT *to permit the Continuance of Obstruction to ancient* LIGHTS (*a*).

Parties.

ARTICLES OF AGREEMENT, made the —— day of ——, 18—; BETWEEN [A. B.], of &c., of the one part; and [C. D.], of &c., of the other part.

Recital of having ancient lights,

and obstruction by buildings.

To prevent disputes.

WHEREAS there are two ancient window lights on the south side of the dwelling-house of the said [A. B.], situate at —— aforesaid, and which window lights have been totally obstructed by a dwelling-house and premises which the said [C. D.] hath lately erected upon his lands adjoining thereto. AND WHEREAS it hath been agreed between the said [A. B.] and [C. D.] for the purpose of preventing disputes between the owners and occupiers of the said two dwelling houses, to enter into the declaration or agreement following, that is to say; AND FIRST the said [C. D.] admits and declares, that the said [A. B.] was well entitled to the said window lights; AND that the said [A. B.] voluntarily, and from motives of friendship, and good neighbourhood, agreed, that the said [C. D.] might obstruct them, as before mentioned. AND THE SAID [A. B.] on his part, agrees that the said window lights shall and may for ever remain obstructed as be-

Admission of right to lights.

And agreement to allow obstruction.

[(*a*) See some observations as to lights, ways, &c., *post*, Vol. 4, p. 245.]

fore mentioned; AND he hereby releases to the said [C. D.] his heirs and assigns, *All* actions, suits, claims, and demands whatsoever, on account thereof. IN WITNESS, &c.

TO PERMIT OBSTRUCTION TO ANCIENT LIGHTS.

Release of all actions, &c.

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AGREEMENT *to* CHARGE LANDS *with the Payment of a Sum of Money secured by Bond.*

TO CHARGE LANDS WITH MONEY SECURED BY BOND.

I, the within-named [*obligor*] do hereby acknowledge and declare, that previously to, and as a consideration and inducement to the within-named [*obligee*] for advancing to me the sum of —— thousand pounds, secured by the within-written bond, I did agree to charge, and in pursuance of that agreement I DO HEREBY charge, and for myself and my heirs do agree, at my own costs and charges, to do and execute every act and deed that shall, by the said [*obligee*], his executors, administrators, or assigns, or his or their counsel, be reasonably required or deemed necessary for the better and more effectual charging, either by mortgages in fee or for years, or otherwise, ALL my freehold and copyhold messuages, lands, and tenements, situate and being in the several parishes of ——, or elsewhere in the county of ——, with the payment of the said sum of —— thousand pounds, at the time within mentioned and appointed for the payment thereof, with interest for the same after the rate of five pounds for a hundred pounds by the year. WITNESS my hand, this —— day of ——, 18—.

Acknowledgment of agreement.

Agreement to charge.

Parcels.

WITNESS

TO EMPLOY INSURANCE BROKER.

AGREEMENT *for employing an* INSURANCE BROKER.

Parties.

ARTICLES OF AGREEMENT, made this —— day of ——, in the year 18—; BETWEEN [*underwriter*], of &c., of the one part; and [*broker*], of &c., of the other part.

Recitals.

WHEREAS the said [*broker*] is an insurance broker, residing at —— aforesaid. AND WHEREAS the said [*underwriter*] is desirous of becoming an underwriter or insurer of ships or vessels, and of merchandize on board ships or vessels, and of employing the said [*broker*] as his broker or agent for the purpose of making and effecting such insurances, and for receiving the premiums of insurance, under and subject to the terms and agreements hereinafter contained.

Underwriter authorizes broker to act as his agent, and use his name and credit, under certain conditions.

FIRST, the said [*underwriter*] doth hereby agree with the said [*broker*], that it shall be lawful for the said [*broker*], until orders or notice to the contrary, to act as the agent or broker of the said [*underwriter*], and to use the name and engage the credit of the said [*underwriter*] as an insurer or underwriter of any sum or sums of money on any ship or vessel, or goods and merchandizes in any ship or vessel, so as the responsibility of the said [*underwriter*] on any one risque, either on a ship or vessel, or goods or merchandize in a ship or vessel, or both jointly or separately, may not exceed the sum of —— pounds at one and the same time, and so as the name of the said

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*[*underwriter*] as an insurer or underwriter shall be used as to such ships or vessels, goods or merchandize only, on which insurances shall be transacted at the office or house of business of the said [*broker*] in the regular and ordinary course of his business as an insurance broker, and on such risques only as are insurable in the common and or-

dinary course of business, (that is to say), at a premium not exceeding —— pounds *per centum* on the sum insured: And that for the purpose of making such insurances as aforesaid, it shall be lawful for the said [*broker*] to use the name, and act as the attorney, of the said [*underwriter*], and to sign, seal, and deliver any policy or policies of insurance in the name and as the act and deed of the said [*underwriter*], and to receive and give acquittances and discharges for any premium or premiums which shall be payable for or in respect of any insurance to be made from time to time in the name and on the account of the said [*underwriter*]: And that he the said [*underwriter*] shall and will yearly and every year, on the —— day of ——, in every year, and in that proportion for any less time than a year, give and allow to the said [*broker*] a salary of —— pounds of lawful money of Great Britain and Ireland, so long and during such time as he shall be employed by the said [*underwriter*] as his broker, under or by virtue of these presents.

TO EMPLOY INSURANCE BROKER.

To execute policies, and give acquittances for premiums;

and to allow broker a salary.

Secondly, the said [*broker*] doth hereby agree with the said [*underwriter*], that he the said [*broker*] shall not or will not at any time, while employed by the said [*underwriter*] as his broker under or by virtue of these presents, engage the name or responsibility of the said [*underwriter*] for any sum exceeding —— pounds, on any one risque on one and the same ship or vessel, or goods or merchandizes in the same ship or vessel, jointly or separately, or on any risque on which the premium shall exceed —— pounds *per centum* for the insurance; or in any insurance other than and except such insurances as shall be transacted at the office or house of business of the said [*broker*], and in the regular and ordinary course of transacting the same business: And that he the said *[*broker*] shall or will from time to time, at the request of the said [*underwriter*], render and give to the said [*underwriter*] an account of all risques in which the said [*underwriter*] shall be then engaged as an insurer, with all such particulars as shall be necessary to enable the said [*underwriter*] to ascertain the nature of the same risques; and also of all money which from time to time shall have been received on account of the said [*underwriter*]

Agreement by broker not to engage underwriter's credit beyond a certain sum, and under other conditions.

To render accounts of risques.

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And of monies received.

TO EMPLOY INSURANCE BROKER.

in respect of the premiums of insurance; and also of all losses which shall have been sustained, or be claimed, under any insurance or insurances in which the name or responsibility of the said [*underwriter*] shall have been engaged (*a*).

Accounts to be settled yearly

THIRDLY, *it is hereby agreed* by and between the said parties, that, yearly and every year, on the —— day of ——, in every year, during such time as the said [*broker*] shall be employed and act as the agent or broker of the said [*underwriter*], the accounts of profits and loss on such insurances as aforesaid, as shall have been made in

Account of profits.

the preceding year, shall be made up and settled; *and* that such account of profits shall comprise the premiums

Account of losses.

received and not returned; *and* that the account of losses shall include all sums payable or to be paid by the said [*underwriter*] as such insurer, together with such costs, charges, and expenses, incurred in settling or ascertaining the liability of the said [*underwriter*], or the quantum or extent of the loss to which he shall be liable, but

Profits to be equally divided.

not the salary of the said [*broker*]; *and* the balance remaining for profit, if any, shall be divided into two equal parts; *and* that one of the said half parts shall belong to and be retained by the said [*broker*], in addition to his said salary, and as a further compensation for his agency; *and* that the other moiety, or half part of the said profits, shall belong and be payable and paid to the said [*underwriter*], his executors, administrators, or assigns, subject, nevertheless, to the right of the said [*broker*] to retain thereout the said sum, or salary of —— pounds a year, unless the same shall have been previously paid by the said [*underwriter*]; *and* that the same moiety, or half part of profits, subject to such deduction

[*291] as aforesaid, shall be paid to the said [*under*writer*], his executors, administrators, or assigns, by the said [*broker*],

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[(*a*) It may be collected to be the intention of the parties, that the broker is not to settle losses without the authority of the principal; perhaps t is better expressly to negative this power by adding,

" but which losses are not to be paid or settled by the said [*broker*] without the express direction and authority of the said [*underwriter*]."

out of any money in his hands; But nothing herein before contained shall make the said [*broker*] liable to pay or contribute all or any part of any losses arising from any insurance to be made as aforesaid, other than and except by way of damages for breach or non-performance of all, any, or either of the agreements hereinbefore contained on his part.

TO EMPLOY INSURANCE BROKER.

Broker not to be liable to losses.

And lastly, each of them the said [*underwriter*] and [*broker*] doth hereby for himself, his heirs, executors, and administrators, covenant, declare, and agree to and with the other of them, his executors and administrators, that each of them the said [*underwriter*] and [*broker*] respectively, and his respective executors and administrators, shall or will, from time to time, observe, perform, fulfil, and keep to and with the other of them, his executors or administrators, the articles, clauses, stipulations, and agreements hereinbefore contained, to be observed, performed, and kept by him or them, on his or on their parts and behalfs, according to the true intent and meaning of these presents. In witness, &c.

Covenant by both parties to perform agreement.

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AGREEMENT *between* Manufacturers *and a* Factor.

MANUFACTURERS AND FACTOR.

This indenture, made the —— day of ——, in the year of our Lord 18—; Between [*factor*], of &c., of the one part; and [*four copartners, principals*], all of &c., of the other part. Whereas the said [*factor*] hath agreed with the said [*principals*] to act as their agent or factor, in the vending of ——, in the city of London, for the term of —— years. Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the covenants and agreements hereinafter entered into by the said [*principals*], he the said [*factor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*principals*], severally and respectively, and with their several and respec-

Parties.

Recital of agreement to act as factor.

Testatum.

MANUFACTURERS AND FACTOR.

Covenant to act as factor for —— years.

tive executors, administrators, and assigns, in manner following, that is to say; That he the said [*factor*] shall and will act as the factor or agent of the said [*principals*], and of the survivors and survivor of them, and of such person or persons as may be copartner or copartners in trade with them, or the survivors or survivor of them, in the vending of ——, for the term of —— years from the date hereof, determinable nevertheless as hereinafter mentioned: And

At the house of principals.

that he the said [*factor*] shall and will conduct and carry on the said agency, at the shop or warehouse of the said [*principals*], in —— Street, in the city of London, or in such other shop or warehouse, in the said city of London, as they, or the survivors or survivor of them, may direct or appoint for that purpose: And

To devote his whole time, and not engage or be employed in any other business.

that he the said [*factor*] shall and will devote and give his whole *time and attention to the said agency, and shall not engage in the business of a seller of ——, or in any other business whatsoever, either on his own account, or as a factor or agent, and either alone or in copartnership with any person or persons whomsoever: And

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To take care of the goods committed to his charge.

that he the said [*factor*] shall and will carefully deposit and preserve, in the shop or warehouse for the time being made use of for the purpose of the said agency business, all such goods, wares, and merchandizes, as may be sent or transmitted to him by the said [*principals*], or the survivors or survivor of them, or any person or persons who may be copartner or copartners in trade with them, or the survivors or survivor of them: And

To procure best sale, either for ready money or to persons of good credit.

that in managing and conducting the said agency, he the said [*factor*] shall and will use his best endeavours to procure the greatest possible sale of the —— and other goods which he shall be employed to sell as such factor as aforesaid, either for ready money, or to persons of responsibility, and worthy to be trusted: And

In selling upon credit, to make inquiries whether the parties applying to purchase on credit are worthy to be trusted.

that in selling upon credit, he the said [*factor*] shall and will be circumspect and cautious, and will make due inquiries from persons of respectability, whether the persons applying to purchase on credit are persons of responsibility, and worthy to be trusted; *And* upon making every such inquiry, shall and

To minute result of inquiries.

will make a minute or memorandum thereof, in a book to be kept for that purpose, specifying the name of the person applying to purchase on credit, the name or names of the person or persons applied to for the purpose of know-

ing whether such person might be trusted with safety, and also specifying what was said upon the subject, by such person or persons so applied to: AND ALSO that he the said [*factor*] shall not nor will give credit to any person or persons, for a greater length of time than ——, without the consent in writing of the said [*principals*], or the survivors or survivor of them; *And* shall not nor will, without such consent, sell to any person on credit, to a greater amount than the sum of —— pounds: AND ALSO that he the said [*factor*] shall and will, in conducting the said agency, conform to and govern himself by such orders, instructions, and directions, as he may from time to time receive from the said [*principals*], or the survivors *or survivor of them; *And* in all cases, where he shall receive no special orders or directions, that he shall and will act in such manner as he shall judge to be most conducive to the advantage of the said [*principals*], and of the survivors and survivor of them, and of such person or persons as may be copartner or copartners in trade with them, or the survivors or survivor of them: AND ALSO that he the said [*factor*] shall and will, from time to time, account for and transmit to the said [*principals*], or the survivors or survivor of them, all monies, bills, and securities for money, received from the sale of any ——, or other goods sold by the said [*factor*], as such factor or agent as aforesaid: AND ALSO that he the said [*factor*] shall and will, from time to time, in case he has assets in his hands, accept and duly pay all such bill and bills of exchange as may be drawn upon him by the said [*principals*], or the survivors or survivor of them, and of which he may receive due notice from them, or the survivors or survivor of them: AND ALSO shall and will, from time to time, on the first day of every month, send and transmit to the said [*principals*], and to the survivors or survivor of them, a full, clear, and correct statement in writing, of all orders both taken and executed; and of all goods which may have come to his hands; and also of all such goods as he may have sold, to whom, and whether for ready money, or on credit; and likewise of all such other matters, transactions, and things, as in any wise concern the said agency business, and which may have taken place during the preceding month: AND

MANUFACTURERS AND FACTOR.

Not to give longer credit than ——, or for a greater amount than —— pounds, without consent of principals.

To act according to directions of principals.

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In absence of special orders, to act for benefit of principals.

To account for and transmit monies, &c. received, to principals.

To accept principals' bills when he has assets in hand.

To transmit monthly account of affairs to principals.

To keep account books.

MANUFACTURERS AND FACTOR.

ALSO that he the said [*factor*] shall and will keep books of account, in which shall be made plain and correct entries of all goods received from the said [*principals*], or the survivors or survivor of them, or from any person or persons who may be the copartner or copartners in trade with them, or the survivors or survivor of them; and also of all goods sold and delivered by him the said [*factor*], as such factor or agent as aforesaid; and also of all orders received and taken; and of all other matters, transactions, and things, in any wise concerning the said agency business: AND that he the said [*factor*] shall and will, on the —— day of ——, and the —— day of ——, in *each and every year, unless either of the said days shall happen on a Sunday, and in that case on the day following, accurately cast up and balance the said books of account, in order that the true state of the said agency business may clearly appear therefrom: AND FURTHER that it shall be lawful for the said [*principals*], or the survivors or survivor of them, or any person or persons who may at any time be the copartner or copartners in trade of them, or the survivors or survivor of them, their respective executors and administrators, or any of them, at all seasonable hours in the day-time, to have free access to the said books of account, and to all other books, papers, documents, and writings, in any wise touching or concerning the said agency business; and to take copies of or extracts from the same or any of them; *and* which said books of account, papers, documents, and writings, the said [*factor*] shall and will carefully preserve, (damages by fire and other inevitable accidents only excepted); and, upon the final settlement and winding up of the said agency business, shall and will give and deliver up the same books, documents, and writings, undefaced and unobliterated, to the said [*principals*], or the survivors or survivor of them, his executors or administrators: AND THE SAID [*factor*], for himself, his heirs, executors, and administrators, doth hereby further covenant and agree with the said [*principals*], their respective executors, administrators, and assigns, that he the said [*factor*] shall and will, out of the salary or wages hereinafter agreed to be paid to him, find and provide a clerk who writes a good hand, and understands accounts and book-keeping, for the purpose of constantly assisting

To balance account books every half year.

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Principals to have access to inspect the accounts, &c.

Account books to be carefully preserved.

Account books to be delivered to principals at end of term.

Covenant by factor to provide a clerk and porter out of his salary.

MANUFACTURERS AND FACTOR.

him the said [*factor*] in the management of the said agency business: AND ALSO that he the said [*factor*] shall and will, out of such wages or salary, find and provide a porter for the purpose of assisting in the said business. AND THE SAID [*principals*], in consideration of the true and just performance of the covenants and agreements hereby entered into by the said [*factor*], for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, do hereby covenant and agree with the said [*factor*], his executors, administrators, and assigns, in manner following, *that is to say; that they the said [*principals*], their respective heirs, executors, and administrators, shall and will yearly and every year, during so long as the said [*factor*] shall act as their agent or factor as aforesaid, pay or cause to be paid unto the said [*factor*], the wages or salary of —— hundred pounds a year, of lawful money of Great Britain and Ireland; the said wages or salary to be paid and payable by even weekly payments; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of these presents: AND ALSO that in case the said [*factor*], as such factor or agent as aforesaid, shall sell and dispose of such a quantity of goods so that commission on [*particular goods*] at the rate of five pounds for every hundred pounds' worth thereof; and on all other goods at the rate of two pounds ten shillings for every hundred pounds' worth thereof, would amount to a greater sum than [*salary*] a year, Then, and in such case they the said [*principals*] shall and will, at the end or expiration of every half year, pay to the said [*factor*] such further sum as will make the said salary or wages of [*salary*] a year, equal to what commission at the rate aforesaid on the goods so sold would have amounted to; *nevertheless*, it is fully understood that such further sum is not to be paid on any bad debts, but only on the amount of the monies actually received and come to hand. AND THE SAID [*principals*] do further agree that the said [*factor*], during such time as he shall act as such factor or agent as aforesaid, shall and may, with his family and servants, reside in the dwelling-house with the appurtenances, over the said shop or warehouse, in —— street aforesaid, free from the payment of rent or taxes for the same:

Covenant by principals to pay salary by weekly payments.

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If factor sell such a quantity of goods, that commission at certain rate would amount to a larger sum than salary, then to pay such further sum as will make salary equal to what commission on goods sold would have amounted to.

Commission not to extend to bad debts.

Agreement to permit factor to reside in rooms over warehouse, rent free.

MANUFACTURERS AND FACTOR.

To pay factor half-yearly all sums paid for carriage of goods, &c.

AND ALSO that they the said [*principals*] shall and will pay unto the said [*factor*], once every six months, all such sums of money as he may have paid or laid out, for or on account of books, paper, and stationery, made use of in and about the said agency business; *and also* all such sums as he may have paid or laid down for the postage of letters relating to the said agency business; *and* for the carriage of goods, wares, and merchandizes sent to him by the said [*principals*], the survivors or *survivor of them, or by any person or persons who may be copartner or copartners in trade with them, or the survivors or survivor of them.

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Not to employ any other person as factor.

AND THE SAID [*principals*] do further agree with the said [*factor*], that they, or the survivors or survivor of them, shall not nor will employ any other person as a factor or agent in the vending of ——, within the city of London, during such time as the said [*factor*] shall act as such factor or agent as aforesaid.

Factor not to be answerable for involuntary losses.

PROVIDED NEVERTHELESS, *and it is hereby agreed* between the parties hereto, that the said [*factor*] shall not be answerable for any loss or damage which may happen to any goods or merchandizes sent to him by any coach, waggon, barge, or otherwise, before the same shall come to his hands or custody; or for any loss or damage which may happen to any goods or merchandize which have actually come to his hands or custody, and which may be sent by the said [*factor*] to any customer by any porter, coach, waggon, barge, ship, or otherwise howsoever; or for any other loss or damage which may happen to any of the goods and merchandizes committed to his charge or care, *unless* such loss or damage happen through his wilful neglect or default; or unless where any loss is stated to happen to any of such goods in the carriage thereof by any coach, waggon, barge, or ship, the said [*factor*] shall have neglected to book at the office of such coach, waggon, barge, or ship, the delivery of such goods or merchandizes.

Power for factor to determine agreement, on giving —— months' notice.

PROVIDED NEVERTHELESS, *and it is hereby agreed* between the parties hereto, that in case the said [*factor*] shall, at any time before the expiration of the said term of —— years, be desirous of giving up the said agency business, it shall be lawful for him so to do, upon giving six calendar months' previous notice in writing of such his intention to the said [*principals*], or

MANUFACTURERS AND FACTOR.

Power for principals to discharge factor, on giving —— months' notice.

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the survivors or survivor of them, or by leaving such notice at their or his usual places or place of abode. And *it is also agreed*, that if the said [*principals*], or the survivors or survivor of them, shall at any time before the expiration of the said term of —— years, be minded and desirous to dis*charge the said [*factor*] from being such factor or agent as aforesaid, it shall be lawful for them or him so to do upon giving six calendar months' previous notice in writing of such intention, or upon leaving such notice at the shop or warehouse for the time being made use of by the said [*factor*] in the said agency business, any thing herein contained to the contrary notwithstanding. And *it is hereby covenanted and agreed* by and between the parties hereto, that if any dispute or difference shall at any time or times arise or happen between the said [*factor*] on the one part, and the said [*principals*], or any person or persons who may be copartner or copartners with them, or the survivors or survivor of them, their respective executors or administrators, or any of them, on the other part, for or on account of any matter or thing herein contained, which shall not within one calendar month after the same shall arise be fully decided between the parties in difference themselves, Then and so often, and in every such case, the matter of every such difference or dispute shall from time to time, upon the request of any of the parties in difference or dispute, be reduced into writing, and be referred to the hearing of three indifferent persons, to be chosen, one by the said [*factor*], his executors or administrators, another by the person or persons in difference or dispute with the said [*factor*], his executors, or administrators, and a third by the two first persons so first chosen: And such arbitrators to be accordingly chosen within the space of two calendar months next after such request as aforesaid: And the award, order and determination of the said three persons so to be chosen as aforesaid, or of any two of them, in the matters referred to them, shall be binding and conclusive upon the parties in difference, their respective executors and administrators; and shall be performed, observed, and kept by them accordingly: *provided* such award, order, or determination, be made in writing, under the hands and seals of the persons making the same,

Arbitration clause.

MANUFACTURERS AND FACTOR.
Rule of Court.

and ready to be shewn to the parties concerned, within the space of twenty-eight days next after the request of any of such parties for that purpose: And for the better enforcing the performance and observance of every such [*299] *award, the same shall from time to time be made a rule of his Majesty's Court of King's Bench, according to the statute in that case made and provided. And for the purpose of better enabling the said [*factor*] to receive and get in all debts and sums of money for or on account of any goods, wares, and merchandizes, which may be sold by him as such factor or agent as aforesaid, they the said [*principals*] by these presents *Do* make, constitute, and appoint the said [*factor*] their true and lawful attorney, for them, and in their names or otherwise, and for their use, to ask, sue for, recover, and receive, all and every such sum and sums of money as shall or may be due or owing from any person or persons, for or on account of any goods or merchandizes sold by him as their agent or factor as aforesaid, and to give receipts and sufficient discharges for the same; *they* the said [*principals*] hereby ratifying and confirming all and whatsoever he the said [*factor*] shall lawfully do or cause to be done, in and about the premises; and any attorney or attornies under him the said [*factor*] to substitute and appoint, and such substitution and appointment at pleasure to revoke (*a*). In witness, &c.

Power of attorney to factor to receive debts.

Power of factor over property of the principal.

[(*a*) It was decided in the Exchequer Chamber, *Williams* v. *Barton*, 3 Bing. 139, (confirming judgment in *B. R.*, 5 Barn. & Ald. 395,) that a factor improperly pledging goods entrusted to him, did not change the property in them; but that they were recoverable in trover by the principal against the pawnee. The law, however, is now altered by stat. 6 Geo. 4, c. 94, which declares, that persons entrusted with goods, &c. for the purpose of consignment or sale, shall be deemed owners, so far as to entitle the consignee to a lien thereon, in respect of advances made or securities given by such consignee to such persons, provided the consignee had no notice of their not being the actual owners. Validity is also given to the sales or pledges, by persons in possession, of bills of lading, India and Dock warrants, &c. But the act does not extend to securities given for pre-existing debts owing by persons so in possession, nor does it prejudice the owner's right to follow the property in the hands of assignees of bankrupts. Persons improperly disposing of goods, &c. are punishable by transportation.'

AGREEMENT *for regulating an* ASSOCIATION *for* PROSECUTING FELONS, &c.

ASSOCIATION FOR PROSECUTING FELONS.

THIS INDENTURE, made the —— day of ——, in the year, 18—; BETWEEN the several persons whose names are or shall be subscribed and seals affixed to these presents, of the one part; and [*treasurer and solicitor*], of &c., of the other part. WHEREAS the several persons parties hereto, of the first part, are inhabitants of, or owners or occupiers of lands within the town of ——, situate in the county of ——. AND WHEREAS the said several persons parties hereto of the first part, have agreed to form themselves into an association for the prosecution of felons and persons guilty of theft, and other crimes and offences within (*intended limits*); *and* they have agreed to give the several rewards hereinafter mentioned, in respect of the following offences, that is to say; *The* sum of (*five*) guineas to any person or persons who shall, during the term of (*seven*) years from the date hereof, discover and give evidence of any robbery on the high-way, within the said ——; or of breaking or entering any dwelling-house, or any barn, stable, or other building within ——, and stealing, or with an intent to steal, any thing thereout; or of stealing any sheep, horse, cattle, or pig, within the same limits; or of setting fire to any dwelling-house, barn, stable, or other building; or to any stack or rick of grain, hay, straw, or fodder, within the same limits; or of maliciously killing or maiming any cattle belonging to any or either of the persons parties hereto of the first part, and being within the limits aforesaid: *And also* the sum of (*three*) guineas to any person or persons who shall discover and give evidence against any person or persons, who shall, during the time aforesaid, and within the limits aforesaid, steal any grain, hay, fowls, household goods, implements or utensils of trade or husbandry, belonging to all

Parties.

Recital of situation of parties.

Agreement to form association.

Scale of rewards.

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ASSOCIATION FOR PROSECUTING FELONS.

or any of the parties hereto of the first part; or be guilty of milking any cow, or of robbing any court yard, garden, orchard, or field; or of cutting down any timber-tree or trees, grove, or plantation, of or belonging to all, any, or either of the persons parties hereto of the first part: *And also* the sum of (*ten shillings and six-pence*) to any person who shall discover and give evidence against any person, who within the limits aforesaid shall steal any peas, turnips, or potatoes, of or belonging to all, any, or either of the persons parties hereto of the first part; or shall be guilty of breaking any hedges, gates, stiles, posts, poles, pales, or rails; or of stealing any hooks or eyes, or any timber, boards, quarters, or offal-wood, which shall be the property of any or either of the persons parties hereto of the first part, and within the limits aforesaid; *Such* rewards to be paid on the conviction of the offenders respectively, in addition to the rewards (if any) allowed by act of Parliament: *And* to contribute towards the same rewards and the expense of prosecuting such felons, thieves, and offenders, in equal proportions; *And* to observe the several articles, rules, orders, and regulations hereinafter contained, that is to say;

Rewards to be paid on conviction.

To contribute towards expenses in equal proportions.

Association to continue for seven years.

FIRST, the said association shall continue (*seven*) years, to commence and be computed from the —— day of ——, and fully to be complete and ended.

Committee to manage affairs of association.

SECONDLY, the affairs of the association shall be under the conduct, regulation, and management, of a committee of —— persons, or any —— of them, to be chosen from the members for the time being of the same association: *Such* committee shall be elected by ballot at a meeting of the subscribers, to be held at ——, on the —— day of ——, in every year: THE committee for the time being, or the major part of them, shall have power to supply any vacancy in their number by death or removal, or refusal to act; THE adjudication of *all rewards, and the conduct and direction of all prosecutions, and the settlement of the accounts relating thereto; AND the right of making calls on the subscribers for the time being, of money to be paid to answer such rewards and to defray the expenses of such prosecutions, shall

To be elected by ballot.

To supply vacancies.

Adjudge rewards.

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Direct prosecutions.

Make calls for money.

be in the discretion and wholly under the control of the committee for the time being, or the major part of them: EACH and every call which shall be made by the said committee, or the major part of them, shall be answered and paid by the members respectively, within (*one*) calendar month after notice to them respectively of the same call: AND each subscriber shall contribute and pay an equal proportion, according to the number of subscribers, towards all money which shall be called for to answer and pay such rewards, or to defray the expenses of prosecutions and all other incidental expenses: THE money which shall be called for from time to time shall be paid to the treasurer for the time being of the said association; *and* shall be applied and paid by him in such manner, and to such persons as the committee for the time being, or the major part of them, shall direct: ALL prosecutions which shall be conducted on the account, and at the expense of the said association, shall be solicited and carried on by the solicitor for the time being of the said association: AND every subscriber shall be entitled to have every prosecution for any offence which, during the said [*seven*] years, shall be committed on his person or property within the limits aforesaid, and which he or she shall be duly bound to prosecute, carried on by the solicitor for the time being of the said association, at the expense of the same association, under the direction and control of the committee for the time being of the said association, or the major part of them: AND the committee for the time being, or the major part of them, shall have full power to undertake any other prosecutions for offences committed within the limits aforesaid, at the expense of the said association, in those instances in which the poverty or situation of the persons on whose persons or property the offences shall be committed, shall render it expedient that the offender or offenders shall be punished at the expense of the said association: EACH and every subscriber shall cease to be a member of the *said association, from the time he or she shall cease to be an inhabitant, and also, not being an inhabitant, to be an owner or occupier of lands within the limits aforesaid: AND each subscriber shall be discharged from his or her engagement herein contained on his or her

ASSOCIATION FOR PROSECUTING FELONS.

Calls to be answered in one month.

Subscribers to contribute equally.

Money to be paid to treasurer.

To be applied as committee direct.

Solicitor to conduct all prosecutions.

Subscribers to be entitled to have prosecutions for offences on their persons or property, carried on by association.

Power to committee to carry on prosecutions for poor persons.

Subscribers not to be members when they cease to be inhabitants, or to be owners, or occupiers.

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Subscribers to be discharged

ASSOCIATION FOR PROSECUTING FELONS.

death, so as not to impose any obligation on his or her heirs, executors, or administrators, for or in respect of any offences to be committed subsequently to his or her death: A treasurer and solicitor to the said association shall be chosen once in every year by ballot, by the major part of the members who shall be present at a meeting to be held at ——, on the —— day of ——: The same person may be chosen treasurer and solicitor, or a different person may be chosen to each of these offices: No treasurer or solicitor shall be eligible on any committee: In case of a vacancy in the office of treasurer or solicitor, either by death or any other cause, within any year, such vacancy may be supplied for the remaining part of the year by the committee for the time being, or the major part of them: The said [*treasurer and solicitor*] shall be treasurer and solicitor for the said association for the first year: The treasurer shall produce his account from time to time to the committee, or the major part of them: And at the end of every year, or on any other election of a new treasurer, the preceding treasurer, or his heirs, executors, or administrators, shall pay to the succeeding treasurer the balance of the money in hand, as the same balance shall be settled and ascertained by the said committee for the time being, or the major part of them; and the account so stated shall be paid, and such payment be a good discharge: No account settled or allowed by the committee for the time being, or the major part of them, shall be afterwards opened or questioned: And all calls made by such committee, or the major part of them, shall be duly answered, without any right to question the expediency or necessity of the same. And *each and every* of the several persons, parties hereto of the first part, *doth* hereby for himself and herself respectively, and his and her respective heirs, executors, and administrators, and as to and concerning only his and her own respective acts, deeds, and defaults, covenant, *declare and agree to and with the said [*treasurer and solicitor*], his executors and administrators, *In trust* for the persons who for the time being shall be the members of the said association, That they the said several persons, parties hereto of the first part, and their respective executors and administrators,

from liability at their death.

Treasurer and solicitor to be chosen by ballot yearly.

Same person, or different persons, may be chosen.

No treasurer or solicitor to be on committee.

Vacancy of treasurer or solicitor in interim of year, to be supplied for remainder by committee.

First treasurer and solicitor.

Treasurer to produce accounts to committee.

Preceding treasurer to pay balance to succeeding treasurer.

No account settled by committee to be questioned.

Calls for money to be answered without inquiry.

Covenant by subscribers,

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with treasurer,

In trust for subscribers, to observe regulations.

shall and will from time to time, and at all times during the said term of (*seven*) years, if they should so long continue members of the said association, pursuant to the rules and regulations hereinbefore contained, or for any shorter time during which they shall continue such members, observe, perform, fulfil, and keep all and singular the articles, stipulations, and agreements hereinbefore contained, to be observed, performed, fulfilled, and kept by them respectively; AND make all such payments as ought to be or shall be required to be made, pursuant to such calls as aforesaid of the said committee for the time being, or the major part of them; AND make such payments respectively to the treasurer for the time being of the same association, subject to the order, control, and disposition of the committee for the time being of the said association, or the major part of them; AND that they respectively shall and will in all other respects conform to, observe, perform, fulfil, and keep, all and singular the rules and regulations hereinbefore contained. IN WITNESS, &c.

ASSOCIATION FOR PROSECUTING FELONS.

To make payments

to treasurer, subject to disposition of committee.

And observe all other rules.

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AGREEMENT *to* BUILD *a House, &c., the Materials to be provided by the Builder.*

TO BUILD A HOUSE, &c.

ARTICLES OF AGREEMENT made and entered into the —— day of ——, 18—; BETWEEN [*builder*], of &c., of the one part; and [*proprietor*], of &c., of the other part.

Parties.

FIRST, the said [*builder*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*proprietor*], his executors, administrators, and assigns, that he the said [*builder*], his executors or administrators, shall or will, for the considerations hereinafter mentioned, within the space or time of (*six calendar months*) from the date of these presents, erect, build, and completely cover in and finish upon the premises of the said [*proprietor*], at —— aforesaid, a

Covenant to erect buildings according to plan.

TO BUILD A HOUSE, &c.

dwelling-house and buildings according to the plan and elevation set forth in the schedule hereunder written: AND ALSO do, perform, and execute, or cause and procure to be done, performed, and executed, all and singular the works also mentioned in the schedule hereunder written, according to the plan and elevation therein mentioned or contained, the same to be done within the time aforesaid, and in a good, workmanlike, and substantial manner (*a*):

[*306] *AND ALSO shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as (*b*) shall be proper and sufficient for erecting the said dwelling-house and buildings, and completely finishing the said works. [AND IT IS FURTHER AGREED by and between the said parties, that if the said [*builder*], his executors or administrators, should in any manner neglect, or be guilty of any delay whatsoever, in building and completely finishing the said dwelling-house, buildings, and works as aforesaid (*c*); *and* the said [*proprietor*] should give or leave notice in writing, of such neglect or delay at the place of abode of him the said [*builder*], his executors or administrators, and the said [*builder*], his executors or administrators, should not (*d*) proceed to complete the said buildings and works, within the space of (*seven*) days after such notice given or left as aforesaid, *Then*, and in any such case, it shall be lawful for the said [*proprietor*], his executors or administrators, to purchase pro-

On builder's default, proprietor to finish the works, and to deduct the expenses.

To the satisfaction of a mutual surveyor or architect.

(*a*) "to the satisfaction of [*surveyor* or *architect*], of &c., or any other surveyor whom the said [*builder*] and [*proprietor*] shall for that purpose by some writing under their hands appoint; to be testified by a writing or certificate under the hand of the said [*surveyor* or *architect*], or such other surveyor as aforesaid:"

Old materials to be used.

(*b*) "together with and in addition to the materials now lying on the said premises,"

Certificate of surveyor or architect.

(*c*) "and the said [*surveyor* or *architect*], or such other surveyor or architect as aforesaid, shall certify the same by writing under his hand;"

Direction of surveyor or architect.

(*d*) "according to the direction of the said [*surveyor* or *architect*], or such other surveyor as aforesaid,"

per and sufficient materials; *and also* to employ a sufficient number of workmen, to finish and complete the said dwelling-house, buildings, and works; *and also* that the said [*proprietor*], his executors, administrators, or assigns, shall and may deduct and retain to himself and themselves the costs of such materials, and all such sum and sums of money as he or they shall pay to such workmen, for the completion of such dwelling-house, buildings, and works, out of the money which shall be due to the said [*builder*], his executors or administrators, under this agreement; *and also* that the said [*builder*], his executors or administrators, shall not nor will in any manner do or cause, or procure to be done, any act, matter, or *thing whatsoever, to prevent, hinder, or molest the said [*proprietor*], his executors, administrators, or assigns, or any person or persons employed by him or them, from completing and finishing the said dwelling-house, buildings, and works, in manner aforesaid; or in using the materials which shall be on the said premises, and provided by either of the said parties for the doing thereof.] AND THE SAID [*proprietor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree, to and with the said [*builder*], his executors and administrators, that he the said [*proprietor*], his executors or administrators, shall and will well and truly pay (*e*), or cause to be paid unto the said [*builder*], his executors, administrators, or assigns, the sum of —— ponnds, of lawful money current in Great Britain (*f*), within —— days, (*or* months) next

TO BUILD A HOUSE, &c.

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Proprietor to pay builder at one payment.

(*e*) If the owner of an estate of inheritance contract for erecting buildings on the lands, and die before they are finished, or the money paid, his heir may compel the finishing; and in both cases the executors or administrators of the ancestor must pay the builder out of his personal estate. *Holt* v. *Holt*, 2 Vern. 322; 3 P. Wms. 223; Cas. Temp. Talb. 83, n.

(*f*) "in manner following, that is to say; the sum of (*seventy-five*) pounds *per cent.* on the amount of the (materials used in the said) buildings and works as they shall proceed, to be ascertained by the surveyor (*or* architect) for the time being, and his certificate under his hand to be conclusive between the said parties. [AND ALSO that the

Or by instalments.

Proprietor to

TO BUILD A HOUSE, &c.

after the said dwelling-house, buildings, and premises, *shall be completely built, done, and finished (*g*). AND IT IS HEREBY DECLARED AND AGREED by and between the said parties hereto, that in case the said [*proprietor*], his executors, administrators, or assigns, should direct any more work to be done (*h*) in or about the said dwelling-house, buildings, and works, than is contained in the schedule hereunder written, *Then*, and in such case, the said [*proprietor*], his executors or administrators, shall pay or cause to be paid unto the said [*builder*], his executors or administrators, so much money as such extra work, and the materials used therein, shall cost or amount unto, any thing hereinbefore contained to the contrary notwithstanding; [*and* that if it should be thought proper by the said [*proprietor*], his executors, administrators, or assigns, to diminish or omit any part of the work in the said schedule hereunder written, *Then*, and in such case, the said [*builder*], his executors, or administrators, shall deduct and allow out of the said sum of —— pounds, so much money as the work so to be diminished or omitted shall

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Additional work to be paid for.

Omitted work to be deducted.

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pay workmen's wages.

said [*proprietor*], his executors or administrators, shall and will every week during the progress of the said buildings and works, pay and supply the said [*builder*], his executors or administrators, with such sums of money as shall be sufficient for paying and discharging the wages and labour of the workmen and labourers who shall from time to time be employed in or about the said buildings and works; the amount whereof shall be ascertained by the surveyor (*or* architect) for the time being, by a certificate under his hand, and the remainder of the said sum of —— pounds, within, &c. (*as above.*)]"

To the satisfaction of surveyor or architect.

(*g*) "to the satisfaction of the said [*surveyor* or *architect*], or such other surveyor as aforesaid, the same to be testified in writing under his hand."

Additional work.

(*h*) Where a builder contracts for a particular sum, and additions are made to the original plan, the contract remains binding as far as it can be traced, and the excess only is recoverable on a *quantum meruit*. *Pepper* v. *Burland*, Peake, N. P. C. 103; S. P. *Robson* v. *Godfrey* & *Thomas*, Holt, N. P. C. 236.

amount unto, upon a reasonable valuation, any thing hereinbefore contained to the contrary notwithstanding (*i*)]. TO BUILD A HOUSE, &c.

AND IT IS HEREBY COVENANTED AND AGREED by and between the said parties hereto, that if any dispute or difference should happen or be made between them, their or either of their executors, administrators, or assigns (*k*), touching or *concerning the said dwelling-house, buildings, and works, hereby covenanted to be made and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work as aforesaid, *Then* such dispute or difference shall be left to the determination and award of *(three)* indifferent persons, one to be named by the said [*builder*], his executors or administrators, another by the said [*proprietor*], his executors, administrators, or assigns, and the third to be chosen by the said two persons so to be named by each of them the said parties, or his executors, administrators, or assigns, immediately or within *(ten)* days after notice of such dispute or difference. AND each of them the said parties doth hereby, for himself and his heirs, executors, and administrators, covenant and agree with the other of them, his executors and administrators, that they the said parties respectively and their respective executors and administrators, shall and will severally stand to, abide, perform, and keep the award and determination of the said *(three)* persons so to be chosen, or of any two of them, touching the said several matters and things so to be referred to them as aforesaid, So as the same determination be made in writing under the hands and seals of the said arbitrators, or some two of them, within one calendar month next after such reference. AND IT IS FURTHER AGREED by and between

Disputes to be referred to arbitration.

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Agreement to abide by award.

Submission to

(*i*) "AND all allowances or deductions for such extra or omitted works respectively, shall be ascertained and settled by the said [*surveyor* or *architect*], or such other surveyor (*or* architect) to be appointed as aforesaid."

Allowances and deductions to be settled by surveyor or architect.

(*k*) "or between either of them, and the said [*surveyor* or *architect*], or such other surveyor (*or* architect to be appointed as aforesaid,"

Disputes with surveyor or architect.

TO BUILD A HOUSE, &c.

be a rule of Court.

Costs to be awarded.

the said parties, that the submission hereby made shall, at the option and expense of either of the said parties requiring the same, be made a rule of his Majesty's Court of King's Bench at Westminster: And that the costs and charges attending any such reference or arbitration as aforesaid, shall be in the discretion of the said arbitrators, or any two of them, and shall be paid and satisfied pursuant to their award. In witness, &c.

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BUILDING A BRIDGE.

AGREEMENT *by Commissioners under an Act of Parliament, with a Mason and a Carpenter, for* BUILDING *a* BRIDGE.

Parties.

ARTICLES OF AGREEMENT made the —— day of ——, in the year of our Lord 18—; Between [A., B., C., and D.] *(describe the commissioners individually)*, being four of the commissioners and trustees nominated and appointed for putting in execution an act made and passed &c., *(set forth the year of the reign, and the title of the act)*, of the one part; and [*mason*], of &c., mason, and [*carpenter*], of &c., carpenter, of the other part.

Recital of meeting of commissioners.

Whereas at a public meeting of the trustees for putting the said act into execution, duly held on the —— day of ——, pursuant to the directions of the act, the said [*commissioners*], by virtue of the powers and authorities in them vested by the said act, determined and resolved, that the intended bridge should be forthwith erected; *And* that they had accepted and agreed to the proposals then and there to them made by the said [*mason* and *carpenter*] for building the same, according to the plans, elevations, and sections, designed and prepared by [*architect*], of &c., architect, and that day signed by the same trustees, and the said [*mason* and *carpenter*], at or for the sum of —— hundred pounds, to

Of acceptance of mason's and carpenter's proposals for building bridge.

be paid as after mentioned; *subject* nevertheless to such alterations as the said [*commissioners*], or any —— or more of them, should think proper to make or cause to be made in the works of the intended bridge: AND the said [*commissioners*], by virtue of the powers and authorities in *them vested by the said act, *have* appointed, and by these presents *do* appoint [*surveyor*], of &c., architect, to be the surveyor of the works, during their pleasure. NOW THESE PRESENTS WITNESS, that for carrying the said proposals and agreement into execution, the said [*commissioners*] on the one part, and the said [*mason* and *carpenter*] on the other part, mutually declare, contract, and agree, as follows; AND FIRST, in consideration of —— hundred pounds, part of the —— hundred pounds to the said [*mason* and *carpenter*] paid by the said [*commissioners*] at or before the sealing and delivery of these presents, the receipt whereof they the said [*mason* and *carpenter*] do and each of them doth hereby admit and acknowledge; *And also*, in consideration of the covenants and agreements hereinafter entered into and contained on the part of the said [*commissioners*], to be by them the said [*commissioners*], their executors and administrators, observed and kept, *They* the said [*mason* and *carpenter*], for themselves jointly and severally(*a*), and for their respective *heirs, executors,

BUILDING A BRIDGE.

Subject to variations by commissioners.

Appointment of surveyor of works.

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Agreement by mason and carpenter, in consideration of —— pounds.

To build a bridge.

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(*a*) Though a covenant be *joint and several* in the terms of it, yet if the interest and cause of action be *joint*, the action must be brought by all the covenantees. And, on the other hand, if the interest and cause of action be *several*, the action may be brought by one only. *Eccleston* v. *Clipsham*, 1 Saund. 153. So, though a man covenant with two or more *jointly*, yet if the interest and cause of action of the covenantees be *several* and not joint, the covenant shall be taken to be several, and each of the covenantees may bring an action for his particular damage, notwithstanding the words of the covenant are joint. *Windham's* case, 5 Co. 8 a; *Wotton* v. *Cooke*, Dyer, 337 b; *Wilkinson* v. *Lloyd*, 2 Mod. 82; *Tippet* v. *Hawkey*, 3 Mod. 263; Bull. Ni. Pri. 157; [and cases cit. *post*, Vol. 4, p. 370; and *vide* Vol. 5, p. 94.]

Joint and several covenants.

But where two persons covenant *jointly* and *severally* with another, the covenantee may bring an action against one of the covenantors only, though their interest in the subject-matter of the covenant be joint; as where A. lets lands to B. and C., and they covenant jointly and severally with the lessor to pay the rent, or the like, he may bring an action against

BUILDING A BRIDGE.

and administrators, do and each of them doth covenant, promise, contract, and agree to and with the said [*commis-*

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either of the covenantors; because they are sureties for each other for the due performance of the covenants, and it is as competent for each of them to covenant for the other, as it is for a stranger to covenant for both, which is a usual thing. *Ennys* v. *Donnithorne*, 2 Burr. 1190; *Lilley* v. *Hedges*, 1 Str. 553; 8 Mod. 166, *S. C.*; 2 Bac. Abr. 68, Gwill. ed. And even if the covenant were joint, and an action brought against *one* of the covenantors, he could only take advantage of it by a plea in abatement. For the distinction which runs through all the cases is between actions brought *by* one of the several covenantees, obligees, or *by* one of several with whom any contract, whether in writing or parol, is made, and actions brought *against* one of several joint covenantors, obligors, or contractors. In the former case the action must be brought by all the parties. For where there are several covenantees or obligees, and one of them only brings an action, without averring in the declaration that the others are dead, the defendant may either take advantage of it at the trial as a variance, upon the plea of *non est factum*, or pray oyer of the deed, and demur generally. So where an action is brought by one of several with whom any contract has been made, the defendant may take advantage of it upon evidence at the trial, upon the plea of *non assumpsit*; or if it appears upon the face of the declaration, that the contract was made with others as well as the plaintiff, it will be error. *Slingsby's* case, 5 Co. 18 b; *Eccleston* v. *Clipsham*, 1 Saund. 153; *Leglise* v. *Champante*, 2 Str. 820; *Vernon* v. *Jefferys*, 2 Str. 1146; *Cabell* v. *Vaughan*, 1 Saund. 291 b; 1 Vent. 34, *S. C.*; *Saunders* v. *Johnson*, Skin. 401; Com. Dig. *Pleader*, (2 V. 2); Bull. Nisi Prius, 158; *Osborn* v. *Crosbern*, 1 Sid. 238; *Holdwich* v. *Chafe*, All. 41; in which last case a distinction seems to be made between the plea of *non est factum*, and praying oyer and demurring: but this distinction does not seem to be warranted by any of the modern cases. But where an action is brought *against* one of several joint covenantors or obligors, the defendant can only take advantage of it by a plea in abatement. And though it should appear upon the record that there are others who ought to be joined as defendants, yet that will not be error. *Whelpdale's* case, 5 Co. 119; *Gilbert* v. *Bath*, 1 Str. 503. So in contracts. *Rice* v. *Shute*, 5 Burr. 2611; *Abbot* v. *Smith*, 2 Black. Rep. 947; Wms. n. 1 Saund. 153, *post*, 502, (*a*).

[In a late case, where an action of covenant was brought against the assignee of a lease, and the defendant pleaded in bar, that, for one period he was possessed of one-sixth only, as tenant in common with certain other persons; and for another period, of one-third only, as tenant in common with others; and that no greater interest came to him by assignment: it was held, that this plea was bad in substance, as the defence was no bar

sioners], their executors and administrators, that they [*mason* and *carpenter*], their executors or administrators, will, at their own proper costs and charges, forthwith begin, and, in an expeditious and workmanlike manner, build, erect, and finish the said intended bridge agreeably to the said plans and sections: AND ALSO find, furnish, and provide all the materials incident or necessary *to building the same; *All* such materials to be the best of their several kinds, and of the respective dimensions, nature, and qualities, herein-after expressed; *And* to be approved by the surveyor of the works for the time being; (*except* only such work and materials as are herein-after agreed by the said commissioners to be provided, supplied, and executed at their own proper expense). AND THE SAID [*mason* and *carpenter*], for themselves jointly and severally, and for their respective heirs, executors, and administrators do, and each of them doth more particularly covenant, promise, contract, and agree with the said [*commissioners*], their executors and administrators, in manner following, that is to say; THAT they the said [*mason* and *carpenter*], their executors and administrators, shall and will, in order to lay the bottoms or foundations of the piers and two abutments of the said intended bridge, cause a batterdeaux to be formed ashore, the sides whereof are to be of a sufficient strength and thickness, so as with proper shorings across the inside thereof to resist the pressure of the water; and which sides are to be so joined, constructed, and caulked, as to be water-tight; the size and shape thereof to correspond with the figure of the lower part of the piers, and to be high enough to exclude high water when placed in the deepest situation: AND shall and will cause the batterdeaux to be carried to the intended

BUILDING A BRIDGE.

Provide materials of the best qualities.

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To be approved by surveyor.

To make a batterdeaux on shore.

And carry same to situation of first pier.

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to the whole action; for the defendant was liable to part, and should have pointed out the other persons liable, and then the plaintiff might have been compelled to include them in his declaration: and the plea was bad in form also, as it merely confessed that the defendant *had possession* of part of the premises, and not that he was *assignee*. *Merceron* v. *Dowson*, 5 Barn. & Cress. 479; *S. C.* 8 Dowl. & Ryl. 264.]

BUILDING A BRIDGE.

And erect dovetailed fir piles in a certain manner.

situation of the pier to be first built, and there sunk and loaded with the materials for building the same: And after the sides of the said batterdeaux are properly placed for the exact situation of the said first pier, a row of dovetailed pier piles shall be driven into the bottom of the river, to such depth as the surveyor for the time being of the said works shall direct; the points thereof, when so driven in, to be at least four feet deeper than the foundation of such pier; and the heads of such piles to be one foot at least above low water mark; and the joints of the said piling to be so executed as to be water-tight; the said row of dovetailed piling to be all round the inside of the sides of the batterdeaux; and where the outside of the piling joins the inside of the batterdeaux, the said space to be strongly secured by bolting the said sides and piling together, and by caulking the same, so as to be water-

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*tight: The water, sand, and mud, contained in the batterdeaux, to be removed and thrown out, and the said space to be kept entirely free and clear therefrom, until the mason work of the said pier is carried up to low water mark: And the said excavation of the sand and mud, and the throwing and keeping out the water, shall be continued to such depth as that the first course of mason work of the same pier may be at the depth hereinafter mentioned: And also shall and will cause the foundation for the said pier to be exactly levelled; and the heads of the said piling cut off level with the same; and shall cause a sufficient quantity of fir scantlings to be laid across the said foundation, so as to lie close one to another, and cover the whole space thereof; and shall also lay another row of scantlings across the first row, and from end to end of the said pier, so as to cover the said space in the same manner between the dovetailed piling: The said scantlings of fir not to be less than five inches thick, ten feet long, and of sound timber, without the least sap or worm in the same: And also shall and will cause the sides of the said batterdeaux to be unfixed and detached from the heads of the dovetailed piling, after the stone-work of the said pier is carried up to low-water-mark, and shall and will cause the said sides to be weighed up and carried from and over the said pier,

Water, sand, and mud, to be removed from batterdeaux.

Foundation of pier to be levelled.

Piling to be levelled.

Fir scantling to be laid across foundation, &c.

Dimensions of scantlings.

When stone-work of first pier finished, to remove batterdeaux to situation of another pier.

BUILDING A BRIDGE.

to the situation of another pier: And shall and will cause each thing herein above mentioned for laying the foundation of the said first pier to be carefully and punctually observed and executed in and for the making a foundation for and to each and all of the several other piers, and the abutments of the said intended bridge: And after the said piers are all finished, shall and will cut off the dovetail piling at least three feet below low-water-mark: And shall and will cause the said scantlings of fir in two rows, or the frame for the half pier or abutment on the side of the river, and for each of the two piers next to that side, to be so far sunk into the bed of the river, as that the first course of stone-work set thereon shall be entirely below the surface of the clay; and the said frames for each of the other two piers, and the half pier or abutment on the —— side of the river, to be so far sunk as that the first course of stone-work set thereon shall stand on a level with the surface of *the clay: And that the piles which shall be driven into the bed of the river, and otherwise used for securing the frames of the piers and abutments of the said intended bridge, shall be of such lengths and dimensions, and be driven to such depths, as the surveyor for the time being of the said works shall direct, with or by a hammer, the weight of which, without the follower, shall be at least eleven hundred weight; and its fall from the top of the sliders to the bottom, twenty feet at the least: And that each of the said piles shall have an iron shoe, of the weight of eight pounds at the least, fixed to one end thereof, in a workmanlike manner, and of such form as shall be best fitted for piercing the bed of the said river: And also shall and will find and provide so many guard-piles, to measure one foot square, and of such lengths as the surveyor of the said works for the time being shall direct; and shall and will cause them, and each and every of them, to be driven into the bed of the said river, to such depths and in such situations, as the surveyor of the said works for the time being shall direct: And shall and will find such and so many floating booms, to measure one foot square, and of such lengths as the surveyor of the said works for the time being shall direct; and shall and will fix each end thereof to some of the said guard-piles, in such manner as to rise

Foundation to be carefully laid.

When piers are finished, to cut off dovetailed piling.

Fir scantlings to be sunk a certain depth.

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Piles to be of such length and dimensions, and driven as surveyor shall direct, with a hammer of a certain weight.

Piles to have iron shoe.

To provide guard-piles, and drive them as surveyor shall direct.

To provide floating booms, as surveyor shall direct,

to rise and fall with tides.

BUILDING A BRIDGE.

and fall with the tides, and to be of sufficient strength to keep off all barges, boats, and ice, from breaking through the same, and damaging any of the works of the said intended bridge: ALL such guard-piles, and floating booms, to be by the said [*mason* and *carpenter*], their executors or administrators, made, found, and provided, at their, some, or one of their own costs, charges, and expenses; and also brought to the place or situation where the same shall be made use of for the purposes above mentioned, at their or some of their own expense; *But* to be there driven and fixed respectively, and afterwards from time to time removed, conveyed, driven, and fixed, at the expense of the said [*commissioners*]; AND after having served all the purposes to which the same shall by the surveyor for the time being of the said works be directed to be applied, the said guard-piles and floating booms shall be the property of the said [*mason* and *carpenter*], *their executors and administrators. PROVIDED NEVERTHELESS, *and it is declared and agreed* between the parties, that if the surveyor of the works for the time being should, when and so soon as the foundations of the piers are excavated, from the quality of the clay or the nature of the foundation, judge it necessary or think it prudent, for the sake of better securing and making good the said foundations, to drive piles into the bed of the river, in the intended situation of all or any of the piers, *Then*, and in such case, the said [*mason* and *carpenter*], their executors and administrators, shall and will cause such and so many piles to be there driven, to such depths as the surveyor for the time being of the said works shall direct; such piles to be found, provided, and delivered for that purpose, by and at the expense of the said [*commissioners*]: AND shall and will cause each of the said piles which shall be so driven, to be cut or sawed off as near to the surface of the ground in the foundations, as the said surveyor shall direct, and in such manner as to be exactly on a level one with another; THE said [*commissioners*] making the said [*mason* and *carpenter*], their executors and administrators, a reasonable satisfaction or recompence for driving and sawing the same; such satisfaction or recompence to be ascertained by the surveyor of the said works for the

Guard-piles and floating booms, to be provided by mason and carpenter;

but to be driven and fixed at the expense of commissioners.

And to belong to mason and carpenter.

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If surveyor should judge additional piles necessary, after foundations excavated,

contractors to drive same;

but the piles to be provided by commissioners.

To cut off additional piles.

Commissioners to make recompence for driving and sawing additional piles, to be ascertained by surveyor.

time being. And the said [*mason* and *carpenter*], for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, do, and each of them doth further covenant, promise, contract, and agree to and with the said [*commissioners*] in manner following, that is to say; That all and every part of the said four piers, and each and every of them, and of the two half piers and abutments of the said intended bridge (*except* such parts thereof as the surveyor for the time being shall be of opinion may be filled up with rubble work, without in any wise diminishing or taking from the necessary and required strength of such a work), shall be of the best stone that can possibly be got in any of the quarries wrought in the parish of ——: And such stones as shall be made use of in the said piers and abutments, and also in each of the arches of the said intended bridge, shall be of such dimensions, or of such weights, as the surveyor, *of the said works for the time being may deem necessary, or shall think fit to direct: And that the first course of stone in each of the said piers shall entirely fill up the space contained within the heads of the dovetail piling: And (unless the surveyor of the said works for the time being shall direct stone of smaller dimensions to be made use of) that no stone in the piers, from the foundation to the high water surface, shall be less than fourteen inches thick: And the stone, blockwork, and stretchers, shall break joint on the face of the work one foot at least; and the heading courses shall break joint inwards towards the middle of the work, one foot at least; and the heading courses also shall break joint at least one foot on the face of the work: And that all the vertical joints in all the leading courses shall be square, one foot at the least inwards towards the middle of the work, from the outward faces of such courses: And the vertical joints of the stretchers shall be square, at least one foot from the face inwards towards the middle of the work: And the horizontal joints shall be good the whole breadth of the stone: And that the asher stones shall break joint at least one foot, where it can be done: And that no beds of the ashers shall be less than nine inches broad: The headings, or bond stones, shall not be less than two feet four inches long; and

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Further agreement by contractors.

Piers to be of best stone.

Stone to be of such dimensions as surveyor shall direct.

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First course.

No stone to high water surface to be less than fourteen inches thick.

Stone, &c. to break joint.

Vertical joints to be square.

Horizontal joints.

Asher stones.

Beds of ashers.

Bond stones.

BUILDING A BRIDGE.

the inner end shall be larger than the outside head or face; and that there shall be one such bond stone in every ten feet length in every course; and no two bond stones shall be within four feet of each other: AND ALSO, that all the beds of the stones, from the foundations to the surface of the low water, shall be good scalped work: AND that all the beds and joints of the stones from the surface of low water upwards, shall be good hewn work; and from the foundations to high water surface, shall be laid in good Dutch terrass, five inches at least from the face, as is usual in such work. AND that all the piers, the two half piers and abutments, shall be of hewn work from high water surface to the top of the parapet: AND that all the spandrels shall be scalped work; and that all the stones in that course, or bed, or layer of stone block, in every pier, and in each half pier and abutment, that shall be immediately below or at the surface of low water, shall be cramped and fastened together with dovetail oak cramps, each of *which cramps shall not be less than one foot six inches long, ten inches broad at the ends, six inches broad in the middle, and three inches thick, or of such other sizes and dimensions, as the surveyor of the said works for the time being shall direct; and that particular thick, broad, and long stones, shall be made use of in the course to be so cramped and fastened together: AND that each block stone to be made use of in the said piers shall measure three inches both in length and breadth more than in height or thickness: AND that all and every part of the said five arches of the said intended bridge, shall be done, executed, and performed, in a good, substantial, and workmanlike manner, with the best block stone that can possibly be procured or gotten in any of the above-mentioned quarries; and to be of such sizes and dimensions as the surveyor of the said works for the time being shall direct, or so near to such dimensions as such stones can be got: AND that each single stone to be made use of in the said arches shall measure three inches at least, both in breadth and length more than in height or thickness: AND that no vertical joint in any of the said five arches, nor in any other part of the said intended bridge, shall be within one foot of the course immediately below it: AND that all the out-

Beds and joints of stones.

Piers.

Spandrels.

Stones under low water mark, to be cramped.

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Dimensions of cramps.

Long and broad stones to be used under water.

Dimensions of pier stones.

Arches to be executed in workmanlike manner.

With best block stone from certain quarries,

of such dimensions as surveyor shall direct.

Dimensions of stones in arches.

Vertical joints.

Outward ends of arch stones.

BUILDING A BRIDGE.

ward ends of all the arch-stones shall be formed and rusticated according to the shape and sizes determined by the said plan, elevation, and sections: AND that the parapet or battlement of the said intended bridge shall be of hewn stone, and correspond in form with the drawing shewn in the said plan, that is to say; that the several spaces between the several recesses made upon the several piers of the said intended bridge, shall be divided into a convenient number of equal spaces, and that stones of about twelve by eighteen inches square, and three feet long, shall be placed and well fastened with their ends upon the façade or *facia;* each of which stones shall have a groove or recess cut in the two opposite edges thereof, six inches wide and about two inches deep, to receive the edges of broad long stones six inches thick and about three feet broad or high; and which are to stand upon their edges on the said *facia*, between the said first-mentioned stones, so as to form a pannel between the said three feet high *stones and the *facia*, and the coping of the parapet or [*319] battlement of the said intended bridge; and so as that no joint may be seen directly on the face of the parapet: AND ALSO that there shall be sufficient iron cramps across every joint at the top of the coping of the parapet, and that each corking of the said cramps shall be upset, and two inches long from the outside of the cramp; and that each cramp shall be one inch square at least, and a foot long between the corkings, and sunk well in the said coping, as the surveyor of the said works for the time being shall direct; and shall be inlaid and run flush with lead: AND that proper hard stones (where there is no foot-path) shall be placed on end against the parapet, to keep carriages from striking against it: AND ALSO that all the spaces in the haunches, or behind the spandrel walls of the arches; all the butments of the bridge and cross walls, as described and expressed in the said plans or drawings, shall be executed in a good, substantial, and workmanlike manner in rubble work, to consist of the largest flat bedded stones carefully packed with smaller ones and mortar; the large stones to be laid so as to break bond, in a workmanlike manner: AND such rubble work shall be executed at the same time and incorporated with the other work, and with stones

Parapet.

Iron cramps to parapet.

Dimensions of cramps.

Stones to be placed for keeping off carriages.

Butments, &c. to be executed in workmanlike manner.

Rubble work.

BUILDING A BRIDGE.

to be got in —— quarry, if the surveyor of the said works for the time being should approve of the same: AND ALSO that a foot passage on the side of the carriage road shall be made and executed in a good, substantial, and workmanlike manner, with the best and hardest flags that can be got in any of the said quarries, in the said parish of ——; such flags to be a foot and a half in length, a foot in breadth, and at least six inches in thickness: AND ALSO that proper places shall be cut in the outward edges of the said footways for the reception of large stones, at such convenient distances as the surveyor of the said works for the time being shall judge necessary, for the sake of preventing the said footway receiving damage from carriages: AND the whole of the said footway shall be laid and performed upon the rubble work; and shall, in every part thereof, be four feet broad, and raised six inches above the surface of the carriage road: AND ALSO shall and will make such channels or conduits for carrying off the water from the said intended *bridge, in such manner as the surveyor of the said works for the time being shall direct: AND ALSO, that all such parts of the works of the said intended bridge as are not hereinbefore contracted for and agreed to be erected and built in any particular manner hereinbefore specified and described, shall be constructed with such materials, and executed and performed in such manner, as the surveyor of the said works for the time being shall direct: AND that all and every part of the works of the said intended bridge shall be performed and executed in a strong, well-beaten, and incorporated mortar, composed of a strong, quick stone-lime, and a sufficient quantity of clear river sand, with a sufficient quantity of the best Dutch terrass, in such parts of the said works as the surveyor thereof for the time being shall direct; and before such mortar is made use of, the same shall be approved by such surveyor. PROVIDED ALWAYS, *and it is agreed and declared* between all the said parties, that if the said [*commissioners*], or any —— or more of them, should at any time or times hereafter think proper to direct any alterations to be made in the form or quantities of the works hereinbefore agreed to be performed before the same shall be performed, *Then*, and so often, and in every such case, they the said [*mason* and *car-*

Foot passage to be made in workmanlike manner.

Excavations to be made for stones to keep off carriages.

Footway to be laid on rubble-work,

and be four feet broad, &c.

To make channels to carry off water.

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Works not specified, to be done as surveyor shall direct.

Strong well-beaten mortar to be used.

Trustees may make alteration in works, and in such case

BUILDING A BRIDGE.

penter], their executors and administrators, shall pursue such directions as they shall in that behalf receive from the same [*commissioners*], or any —— or more of them; and execute and perform the same in a strong, proper, and workmanlike manner: AND that it shall be referred to the surveyor for the time being of the said works to consider, and by some writing under his hand to determine, how far such alterations on the whole will be a saving or additional expense to the said [*mason* and *carpenter*], their executors and administrators; *and* if the same should appear to be a saving, the sum saved shall be abated out of the last payment of the said —— hundred pounds; *but* if such alterations on the whole should appear to be attended with an additional expense, the same shall be satisfied and made good to the said [*mason* and *carpenter*], their executors and administrators, by the said [*commissioners*], over and above the said —— hundred pounds, within three months next after finishing and completing the said bridge: AND THE *SAID [*mason* and *carpenter*], jointly and severally, and for their several and respective heirs, executors, and administrators, do, and each of them doth further convenant, promise, contract, and agree with the said [*commissioners*], their executors and administrators, that if any of the materials before agreed to be provided, made use of, or employed by them, in or about the works of the said intended bridge, should be found defective by the surveyor of the said works for the time being, *Then* and in such case, all such defective materials shall be forthwith removed at the expense of the said [*mason* and *carpenter*], their executors and administrators, and others in all respects fit, proper, and sufficient, and to the satisfaction of the same surveyor, shall be immediately provided and made use of, in the place and stead of such as shall be deemed defective: AND that if any part of said works should be found defective by the surveyor of the same for the time being, in point of workmanship, (as by a bad disposition of the materials, or otherwise), *Then*, and in every such case, such defective work shall be forthwith pulled down and removed, at the expense of the said [*mason* and *carpenter*], their executors and administrators, and immediately rebuilt in a complete workmanlike manner, to the satisfaction of the same surveyor:

surveyor to settle difference in expense.

[*321]

Covenant by contractors, that if surveyor should think any materials not proper, they would remove them, and provide such as are proper at their own expense.

If any part of works be found defective, such part to be pulled down, and rebuilt at expense of contractors.

BUILDING A BRIDGE.

Contractors to provide machinery, tools, &c. for building bridge.

AND FURTHER, that they the said [*mason* and *carpenter*], their executors and administrators, shall find and provide, at their own expense, all and all manner of centres, scaffolding, machinery, instruments, tools, tackle, cables, ropes, boats, barges, lighters, carriages, cranes, and all other materials whatsoever, for executing and performing all the work whatsoever necessary for the beginning, carrying on, constructing, completing, and finishing of the said intended bridge (*except* as before excepted): AND ALSO shall and will do, execute, and perform, all and all manner of labour and workmanship that shall be necessary or proper for the moving, removing, doing, executing, performing, and completing the several and respective parts of the said intended bridge; and bear, pay, and defray, all the necessary and incidental charges and expenses whatsoever which shall attend the same; it being the intent and meaning of this agreement, and the parties hereto, that the said [*commissioners*] are not to be at any further or other expense *in and about the beginning, building, completing, and finishing the said intended bridge, than what is hereinbefore and hereinafter expressly covenanted, contracted, and agreed to be by them paid, done, and performed: AND MOREOVER, that they the said [*mason* and *carpenter*] shall and will, during the whole time of building the said intended bridge, give due personal attendance upon the execution of all the works aforesaid; and take effectual care that the same be carried on, executed, and performed, with such expedition and dispatch, that the said intended bridge be made passable for foot passengers on or before —— next; and for horses, carts, and carriages, on or before —— next; and in every respect completed and finished on or before ——: AND that if it should happen that the said intended bridge shall not be passable, completed, and finished as aforesaid, within the times aforesaid, through or by reason or means of any neglect or default of them the said [*mason* and *carpenter*], or either of them, or their or either of their executors or administrators, or of their or any of their workmen or servants, in the performance of any of the said works contracted to be done, executed, and performed, *Then* that they the said [*mason* and *carpenter*], their executors and administrators, shall

Contractors to execute every kind of labour.

Commissioners to be at no other expense than what they covenant to bear.

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Contractors to give personal attendance, and finish bridge if possible before a certain day; and if not finished by that time, owing to their neglect, to incur a penalty.

BUILDING A BRIDGE.

forfeit and pay unto the said [*commissioners*], their executors and administrators, the sum of fifty pounds of lawful money of Great Britain and Ireland, by the month, for each and every calendar month which shall be taken up in the finishing or completing the said intended bridge, after the said —— day of ——; such forfeitures to be retained and deducted out of so much of the said sum of —— hundred pounds, as for the time being shall remain unpaid: And the said [*commissioners*], in consideration of the premises, do and each and every of them doth, for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, covenant, promise, contract, and agree, with the said [*mason* and *carpenter*], their executors and administrators, that they the said [*mason* and *carpenter*], their executors or administrators duly executing and performing all and every the articles, clauses, covenants, agreements, matters, and things, on their several and respective parts to be observed, done, and performed, according to the true intent *and meaning of these presents, and of the parties hereto, [*323] *They* the said [*commissioners*], their heirs, executors, or administrators, shall and will pay, or secure to be paid, to the said [*mason* and *carpenter*], their executors or administrators, the sum of —— pounds, residue of the said sum of —— hundred pounds in full, for the building and completing the said intended bridge, in manner following, that is to say; the sum of —— pounds when the frame for the foundation of each of the piers shall be laid, and also the abutments; the sum of —— pounds when each of the piers and abutments shall be (*of a certain height*); the sum of —— pounds when each arch shall be closed; the sum of —— pounds when the spandrels and piers shall be carried to their full height, and ready for the *facia* or seat of the parapet; and the residue of the said sum of —— hundred pounds within three months after the said bridge shall be finished. And the said [*commissioners*] do, and each and every of them doth, for themselves jointly and severally, and for their several and respective heirs, executors, and administrators, covenant, promise, and agree with the said [*mason* and *carpenter*], their executors and administrators, that they the said [*commissioners*], their heirs,

Covenant by commissioners to pay remainder of sum for which bridge is to be built, by instalments, at different stages of the work.

Commissioners to make satisfaction to the proprietors of lands on each side of river, to which any damage may be done by carrying on

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works, and to indemnify contractors therefrom.

executors, or administrators, shall and will make satisfaction to the owners or occupiers of lands on either side of the said river, which may be injured by carrying on the said intended works; AND ALSO shall and will indemnify, save harmless, and keep indemnified the said [*mason* and *carpenter*], their executors and administrators, of, from, and against the same; and all actions, suits, claims and demands, costs, charges, damages and expenses whatsoever, which shall or may be borne or paid by the said [*mason* and *carpenter*], their executors or administrators, by reason or on account thereof. PROVIDED ALWAYS, *and it is hereby further agreed* between the said parties, that if any damage by floods, or other inevitable accident, should happen to the said works, which the said [*mason* and *carpenter*], their executors or administrators, shall not have it in their power to prevent, the same shall be made good and repaired by the said [*mason* and *carpenter*], their executors and administrators, at the expense of the said [*commissioners*]; *but* if such damage should *happen, owing to, or in consequence of, the neglect or default of the said [*mason* and *carpenter*], or either of them, their executors or administrators, the same shall be immediately remedied and made good at their own expense. (*Add arbitration clause, ut ante*, 280). AND, LASTLY, for the performance of all the covenants and undertakings herein contained on the parts of the said [*mason* and *carpenter*], their executors and administrators, they the said [*mason* and *carpenter*] jointly and severally bind themselves, their heirs, executors, and administrators, to the said [*commissioners*], their executors and administrators, in the sum or penalty of —— pounds, with interest: AND for the performance of all the covenants and agreements herein contained on the parts of the said [*commissioners*], their executors and administrators, they the said [*commissioners*] jointly and severally bind themselves, their heirs, executors, and administrators, to the said [*mason* and *carpenter*], their executors and administrators, in the sum or penalty of (*a*) —— pounds, with interest. IN WITNESS, &c.

If damage happen to works by floods, &c. which contractors could not prevent, commissioners to repair same.

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Arbitration clause.

Nomine pœnæ on part of contractors.

Nomine pœnæ on part of commissioners.

(*a*) *Vide ante*, 47, (*h*).

AGREEMENT *for* BUILDING *or* COMPLETING *a* SHIP.

BUILDING A SHIP.

ARTICLES OF AGREEMENT made the —— day of ——, in the year 18—; BETWEEN [*builder*], of &c., ship builder, of the one part; and [*merchant*], of the same place, merchant, of the other part. Parties.

WHEREAS(*a*), it hath been agreed by and between the parties hereto, that the said [*builder*] shall at his present place of building, on or before the —— day of —— next, in a workmanlike manner, build for the said [*merchant*] the hull of a ship or vessel of the dimensions hereinafter mentioned, for the price or sum of —— thousand —— hundred pounds, and such further and other sum and sums of money, to be ascertained and paid at such times and in such manner as hereinafter is mentioned and *specified. IN CONSIDERATION of which agreement, and of the sum of —— hundred pounds, part of the said sum of —— thousand —— hundred pounds, by the said [*mer-* Recital of contract.

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Agreement to build ship.

Part of the money paid.

(*a*) If it be a contract for finishing a ship already upon the stocks, say, FINISHING.

" WHEREAS there is now upon the stocks in the yard of the said [*builder*], at &c., the hull of a ship of the following dimensions, that is to say; (*state the dimensions, as in the next page*); AND WHEREAS the hull of the said ship is already *(state the degree of forwardness);* AND WHEREAS the said [*merchant*] hath contracted and agreed with the said [*builder*], for the purchase of the hull of the said ship as she now stands, for the sum of —— pounds; and hath also contracted and agreed with the said [*builder*], for completing the hull of the said ship, in manner and upon the terms hereinafter mentioned."

BUILDING A SHIP.

chant] to the said [*builder*] in hand paid at or before the execution of these presents, the receipt whereof is hereby acknowledged, *he* the said [*builder*] doth covenant and agree with the said [*merchant*], his executors, administrators, and assigns, to build and construct for him the said [*merchant*], his executors, administrators, or assigns, the hull of a ship or vessel of the following description or dimensions, that is to say; the keel of the said hull to be in length within the posts eighty feet; the rake afore to be ten feet, the rake abaft to be suitable; the harpins to lie at fourteen feet forwards, and fifteen feet aft; the hull at the dead flat to be in breadth twenty-eight feet; the birth thereof to be nineteen feet from the top of the ceiling to the top of the covering board; the square of the floor to be fifteen inches on the keel, and eleven inches at the sirmark; the timbers to be eight inches square at the binds, and four inches at the top timber heads; the transom to be eighteen feet long; the post four feet broad; the plank from the keel to the binds to be three inches thick, *except* five strokes on each side, *viz.* three on the bilge and two under the binds, which are to be four inch plank; the hull to have three binds, each ten inches deep and seven inches thick; one stroke immediately above the binds to be four inch plank, all the rest to the channel bind three inch plank, and above the channel bind to be two inch and a half plank; to have twelve hold beams, thirteen inches square, with eight hooks forward, all whole transoms aft, and one hook to be ceiled with three inch plank from the keel to the underside of the hold beams, *except* three strokes on the bilge on each side, four inch plank; all the ceiling, from the hold beams to the upper deck beams, to be two inch and a half plank, *except* one long plank under the main deck beam, which is to be four inches thick; to be ceiled fore and aft with two inch and a half plank, and above the binds forward with two inch plank; to have one four inch plank to be bolted to the fore beam, and transom knees to be bolted through the side into the beams; the main deck to be laid with Norway

Dimensions of ship, and descriptions of materials to be used.

[*327] *deals three inches thick, two abaft the main mast, and from thence to be two inch and a half plank; to have a sufficient number of main deck beams; to have two feet

BUILDING A SHIP.

ten inches waste, and two drifts fore and aft two feet deep; the quarter deck and forecastle deck to be laid with Norway deals two inches thick; the floors to be sixteen feet long, with fourteen inches rise; the binds to have two feet and a half hang; the covering boards in the midships to be two inch and a half plank; to have windlass, capstan, catheads, rudder, and tiller, all of sound good oak, of a size and construction fit for such a vessel; to have fourteen gunports; all the timbers and planks to be made use of in building the hull of the said vessel, (*except* the planks with which the decks are laid, and which are to be of Norway deal as aforesaid), are to be oak of English growth, well seasoned and dried, and in every respect fit for the purposes to which the same shall be applied; the trennels to be bought at London, and be of the best sort; the hatches to be made and constructed in the best and most approved manner; the hull and deck of the said vessel to be well caulked with well teazed oakum, and fitted up and finished in a substantial and workmanlike manner, with all things necessary and usually made and provided by ship builders for ships of such burthen and construction as the said intended vessel shall be; and the said ship or vessel shall, on or before the said —— day of ——, be launched, and brought and moored in safety in the harbour of ——.

To be launched in a certain time.

And the said [*merchant*], in consideration of the said ship being so built and launched as aforesaid, doth covenant and agree with the said [*builder*], his executors, administrators, and assigns, *That* he the said [*merchant*], his heirs, executors, or administrators, shall and will pay (*b*) or cause to be paid unto the said [*builder*], his executors, administrators, or assigns, the further sum of —— hundred pounds, other part of the said sum of —— thousand —— hundred pounds, upon laying the *harpins of the said vessel; —— hundred pounds more, other part of the said sum of —— thousand —— hundred pounds, upon laying the deck; and —— hundred pounds, the residue of the said sum of —— thousand —— hundred pounds, upon

Covenant to pay remainder of price of ship at certain stages of the work.

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(*b*) It might be prudent, in some instances, for the person for whom the ship is built to give a bond for payment of the money.

BUILDING A SHIP.

launching and mooring the said vessel in safety in —— harbour: And also such other sum and sums of money as [*referees*], of &c., shall, within ten days from the time of mooring the said vessel in safety in —— harbour as aforesaid, in that behalf think reasonable; *or* in case either of them should die or refuse to undertake such determination, Then such sum and sums of money as two indifferent persons, the one to be nominated by the said [*builder*], his executors or administrators, and the other by the said [*merchant*], his executors or administrators, shall, within fifteen days from the time aforesaid, in that behalf resolve and determine upon, in order to complete the price of the said hull: *And* in default of any such determination within the respective times hereinbefore for that purpose limited, then the said [*merchant*], his heirs, executors, or administrators, shall pay to the said [*builder*], his executors, administrators, or assigns, such sum or sums of money, for the purpose last mentioned, as shall be resolved upon and determined by such one indifferent person as the two referees, who shall undertake the determination of the said matter, shall for that purpose nominate and appoint umpire in the premises, who shall determine the same within ten days after he shall be appointed umpire: And that the determination to be made as aforesaid shall be conclusive on the said parties hereto, their respective executors and administrators: And that the sum and sums of money so to be ascertained and determined, shall, within ten days after such determination, be paid by the said [*merchant*], his heirs, executors, or administrators, to the said [*builder*], his executors, administrators, or assigns: And *it is further agreed* between the said parties hereto, that all differences arising between them, touching the said hull, shall in like manner be referred and determined, and that every such determination shall be final and binding. And the said [*merchant*] agrees to provide for the carpenters employed in the building of the said hull, during such time as they shall be so employed, such allowances of bread, cheese, and ale, as are usual in such cases; And *it is also agreed* between the said parties hereto, and particularly the said [*builder*] doth agree, that the same hull, from time to time during

Covenant to pay such further sum as referees shall determine.

Umpire.

Determination to be final.

Money to be paid in ten days after determination.

Differences to be referred to arbitration.

Merchant to provide carpenters with bread, cheese, and ale.

[*329]

Ship, whilst building, to stand charged with monies advanced.

BUILDING A SHIP.

the building thereof, and until the same shall be so moored in safety as aforesaid, and assigned to the said [*merchant*], his executors or administrators, shall stand charged with and be a security to him and them for the said sum of —— hundred pounds already paid, and for such further and other sum and sums of money as shall be paid to the said [*builder*], his executors, administrators, or assigns, in pursuance of this agreement; *To the intent* that the said hull shall not be or become liable or subject to the debts, contracts, or engagements, or otherwise affected by any act of the said [*builder*], his executors, or administrators, to the prejudice of the said [*merchant*], his executors or administrators: And that the said [*builder*], his executors or administrators, shall and will, after the said hull shall be so moored in safety in the harbour of —— as aforesaid, by some proper deed or instrument in writing, assign the same, free from all incumbrances, to the said [*merchant*], his executors or administrators, at his and their request, costs, and charges. In witness, &c.

Builder, after ship is launched, to assign her to purchaser.

[*The following additional Precedents and Notes applicable to the head "Agreement," have been added by the Editor of this Edition.*]

AGREEMENT *to pay for* Goods *to be* furnished *to a third Person* (*a*). *A short Form.*

TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

Parties.

AGREED this —— day of ——, Between A. B., of &c., of the one part; and C. D., of &c., Manchester Warehouseman, of the other part, as follows,—(that is to say):

Whereas the said [A. B.] hath requested the said [C. D.] to supply [E. F.] (a relative of the said A. B.)

(*a*) An agreement to pay the debt of another,—to revive a debt dis-

TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

with goods on credit, which he has consented to do, on the said [A. B.] entering into the agreement hereinafter con-

charged by bankruptcy,—and to pay a debt contracted in infancy, of which this and the two following precedents consist, are required to be in writing.

No person to be charged by agreement to answer for the debt of another, &c., unless signed by the party to be charged.

The Statute of Frauds, 29 Car. 2, c. 3, sect. 4, enacts, that "no action shall be brought whereby to charge any executor or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

What contracts for the sale of goods required to be in writing.

And section 17, "That no contract for the sale of any goods, wares, and merchandizes, for the price of ten pounds sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized."

No bankrupt liable to pay debt discharged by certificate, unless promise be in writing.

The late Bankrupt Act, (6 Geo. 4, c. 16, s. 131), provides, "That no bankrupt, after his certificate shall have been allowed under any present or future commission, shall be liable to pay or satisfy any debt, claim, or demand, from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim, or demand, upon any contract, promise, or agreement, made or to be made after the suing out of the commission, unless such promise &c. be made in writing, signed by the bankrupt, or by some person thereto lawfully authorized in writing by such bankrupt."

Lord *Tenterden's* Act, 9 Geo. 4, c. 14.

A late important statute (introduced into the House of Lords by Lord *Tenterden*), after reciting the English and Irish statutes of limitations, (21 Jac. 1, c. 16; 10 Car. 1, sess. 2, c. 6); and that various questions had arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments,

In action of debt, or upon the case, no acknowledgment shall be deemed

enacts, "That in actions of debt, or upon the case, grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of

tained: Now, therefore, in consideration of the premises, the said [A. B.], for himself, his executors or adminis- TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

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them, or to deprive any party of the benefit thereof, *unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby;* and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator, shall lose the benefit of the said enactments, or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them; *Provided always*, that nothing herein contained shall alter, or take away, or lessen the effect of any payment of any principal or interest made by any person whatsoever; *Provided also*, that in actions to be commenced against two or more of such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise, that the plaintiff, though barred by either of the said recited acts, or this act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given, and costs allowed, for the plaintiff, as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff."

sufficient unless it be in writing.

Proviso as to part payment.

Proviso for the case of joint contractors.

Judgment may be recovered against one only, in an action against several.

Sect. 2, "That if any defendant or defendants in any action on any simple contract, shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue be joined on such plea; and it shall appear at the trial that the action could not, by reason of the said recited acts, or this act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same."

Pleas in abatement.

Sect. 3, "That no indorsement or memorandum of any payment, written or made after the time appointed for this act to take effect, upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said statutes."

Indorsements of payment.

Sect. 4, "That the said recited acts, and this act, shall be deemed and taken to apply to the case of any debt on simple contract, alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise."

Simple contract debts alleged by way of set-off.

Sect. 5, "That no action shall be maintained, whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or sim-

Confirmation of promises made by infants.

TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

trators, doth hereby undertake and agree with the said [C. D.], his executors or administrators, that he the said

ple contract made during infancy, unless such promise or ratification shall be made by some writing, signed by the party to be charged therewith."

Representation of character, &c.

Sect. 6, "That no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon†, unless such representation or assurance be made in writing, signed by the party to be charged therewith."

† *Sic.*

Clause in statute of frauds extended to contracts for goods, although delivery not made.

Sect. 7, extends the clause in the statute of frauds (sect. 17, *sup.* 329 *a*), and a similar clause in the Irish statute, 7 W. 3, "to all contracts for the sale of goods of the value of 10*l.* sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not, at the time of such contract, be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery."

Exemption from stamps.

Sect. 8. "That no memorandum or other writing made necessary by this act, shall be deemed to be an agreement, within the meaning of any statute relating to the duties of stamps."

Not to extend to Scotland. Commencement of act.

Sect. 9. Act not to extend to Scotland.

Sect. 10. Act to commence on 1st January, 1829.

In preparing written agreements, consideration should be stated.

In preparing agreements, which are required by the preceding statutes to be in writing, care should be taken to express the consideration; for, according to the doctrine of several cases, this is essential to the validity of the agreement, and cannot be supplied by oral testimony; and the consideration should be such as to operate as a *present* inducement to the obligation contracted, or, in other words, should refer to something *about* to be done, and not be a past and by-gone consideration; though unquestionably, in some of the cases, the instrument seems to have been supported by a consideration of the latter species. *Boehm* v. *Campbell*, 3 J. B. Moore, 15; *Pace* v. *Marsh*, 8 Id. 59. It is not possible, indeed, to reconcile all the cases upon the subject. See *Wain* v. *Walters*, 5 East, 10; (but as to which see *Ex parte Minet*, 14 Ves. 190; *Ex parte Gardom*, 15 Id. 288); *Lyon* v. *Lamb*, Fell's Merc. Guar. 260; *Jenkins* v. *Reynolds*, 3 Barn. & Ald. 14; *Saunders* v. *Wakefield*, 4 Id. 595; *Boehm* v. *Campbell*, 3 J. B. Moore, 15; *Stead* v. *Liddard*, 8 J. B. Moore, 2; *Pace* v. *Marsh*, Id. 59; *S. C.* 1 Bing. 216; *Morley* v. *Boothby*, 3 Bing. 107; but certainly the leaning of the later cases has been in favour of requiring the consideration to be stated. In *Morley* v. *Boothby*, the undertaking was in these words, "Messrs. *M. & Co.*, we hereby promise that your draft on *Wm. Clarke, Son, & Co.* due at Messrs. *Masterman's*, at six months, on the 27th of

[A. B.], his executors or administrators, will pay or cause to be paid unto the said [C. D.], his executors or admi- TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

Nov. next, shall be then paid out of money to be received from St. *Philip's* church, say amount 174*l.* 13*s.* 5*d.* *W. Clarke, W. Boothby.*" It was held, that as there was no apparent benefit accruing to the debtors, nor any inconvenience sustained by the creditors, in consequence of this arrangement, it was without consideration upon the face of it, and, therefore, the plaintiff could not recover. Where the act requires an "acknowledgment" only to be in writing, it is apprehended that the principle of the preceding cases does not apply.

As to stamps on agreements.

It will be perceived that Lord *Tenterden's* Act exempts agreements, rendered necessary by the act to be in writing, from stamp duty. The Bankrupt Act, however, contains no such exemption. Agreements therefore by a bankrupt, as in the next precedent, and also agreements required by the statute of frauds to be in writing, must be duly stamped as such, unless they come under the exemption in the late stamp act, 55 Geo. 3, c. 184; which imposes a duty of 1*l.* on every agreement, or any minute or memorandum of an agreement, made in *England* under hand only, or made in *Scotland* without any clause of registration (and not otherwise charged nor expressly exempted), where the matter thereof shall be of the value of twenty pounds or upwards, whether the same shall be only evidence of a contract, or obligatory upon the parties from its being a written instrument, together with every schedule, receipt, or other matter put or indorsed thereon or annexed thereto, where the same shall not contain more than one thousand and eighty words (being the amount of fifteen common law folios or sheets of seventy-two words each):—And where the same shall contain more than one thousand and eighty words, 1*l.* 15*s.*:—And for every entire quantity of one thousand and eighty words contained therein, above the first one thousand and eighty words, a further progressive duty of 1*l.* 5*s.*

Provided always, that where divers letters shall be offered in evidence to prove any agreement between the parties who shall have written such letters, it shall be sufficient if any one of such letters shall be stamped with a duty of 1*l.* 15*s.*, although the same shall, in the whole, contain twice the number of 1,080 words or upwards.

Exemptions from the preceding and all other Stamp Duties.

Agreements exempted from stamp duty.

Memorandum containing the heads of insurances by the Royal Exchange and London Assurance offices.

Memorandum or agreement for granting a lease at rack-rent of any messuage &c., under the yearly rent of 5l.—For the hire of any labourer, artificer, manufacturer, or menial servant:—Made for or relating to the sale of any goods, wares, or merchandize:—Between the master and mari-

TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.

nistrators, all and every such sum and sums of money as he the said [C. D.] shall from time to time become indebted to the said [C. D.], for goods sold and delivered unto or on the account or for the use of the said [E. F.], not exceeding in the whole the sum of £ ——: *Provided* nevertheless, that this guarantee shall not be considered as satisfied in the whole or in part, by the payment by the said [E. F.] of any sum or sums of money on account of goods to be supplied to him as aforesaid, but shall extend to cover the balance for the time being due from the said [E. F.] to the said [C. D.], on the account aforesaid, not exceeding the amount hereinbefore mentioned: As WITNESS the hands of the parties the day and year aforesaid (*b*).

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ners of any ship or vessel, for wages on any voyage coastwise from port to port in Great Britain.

Letters containing any agreement (not before exempted) in respect of any merchandize, or evidence of such an agreement, which shall pass by the post, between merchants or other persons carrying on trade or commerce in Great Britain, and residing, and actually being, at the time of sending such letters, at the distance of fifty miles from each other.

All contracts &c., exempted by statute 17 Geo. 3, c. 53, *or any other act for promoting the residence of the parochial clergy, by making provision for building, repairing, or purchasing houses and other buildings for the use of their benefices.*

All contracts, conveyances, &c. exempted by stat. 42 Geo. 3, c. 116, *or any other act relating to the redemption and sale of the land-tax.*

All contracts &c., relating to the transportation of convicts.

To bring an agreement within the exemption from stamp duty as such, it must not be *under seal*, otherwise it becomes chargeable as a deed. *Vide post*, Vol. 4, p. 403.

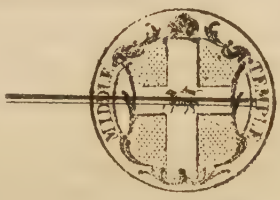
(*b*) An agreement of this nature is often contained in a letter, and may then be expressed as follows:—

" [*Date*].

" Gentlemen,—In consideration of your agreeing to supply my son, [A. B.], with goods on credit, on my guarantee hereinafter contained: I hereby undertake to be answerable for the current balance, which shall or may at any time be due from him to you on account of such goods, not exceeding the sum of —— pounds; and this guarantee shall

not be affected by the death or retirement of any member of your firm, or the addition of any partner or partners thereto, but shall extend to the goods supplied by the firm so altered; nor shall this guarantee prevent my said son from being liable to pay for any goods so furnished to him as aforesaid. I am, &c."

TO PAY FOR GOODS TO BE SUPPLIED TO ANOTHER.



AGREEMENT *by Bankrupt to pay a Debt due from him before his Bankruptcy, and from which he was discharged by his Certificate.* (void)

BY BANKRUPT TO PAY DEBT NOTWITHSTANDING CERTIFICATE.

AGREED this —— day of ——, BETWEEN [*bankrupt*], of &c., of the one part; and [*creditor*], of &c., of the other part.

Parties.

WHEREAS a commission of bankrupt some time since issued against the said [*bankrupt*], under which he was declared a bankrupt, and he has duly obtained his certificate under the said commission; AND WHEREAS the said [*bankrupt*], at the time of such his bankruptcy, was indebted to the said [*creditor*] in the sum of —— pounds, which debt the said [*creditor*] has proved against the estate of the said [*bankrupt*], and has received two dividends (including a final dividend) thereon, amounting to the aggregate sum of —— pounds, leaving the sum of —— pounds, part of the said debt, unsatisfied; AND WHEREAS although the said [*bankrupt*] is discharged by his said certificate from all legal obligation to pay to the said [*creditor*] the sum of ——, residue of the said debt, yet he hath determined to subject himself to the payment thereof, for the consideration and in the manner hereinafter expressed. NOW, THEREFORE, the said [*bankrupt*], in consideration that the said [*creditor*] hath afforded him valuable assistance, to enable him to prosecute his trade or business of a —— since his

BY BANKRUPT TO PAY DEBT NOTWITHSTANDING CERTIFICATE.

said bankruptcy, and particularly has this day, at the solicitation of the said [*bankrupt*], and on the faith of the present agreement, become surety for the payment of the rent of certain warehouses at ——, let to the said [*bankrupt*], he the said [*bankrupt*], for himself, his executors, or administrators, hereby contracts and agrees with the said [*creditor*], that he the said [*bankrupt*], his executors or administrators, will pay to the said [*creditor*], his executors or administrators, the said sum of —— pounds, the residue of the said debt, owing to the said [*creditor*] from the said [*bankrupt*], at the time of his bankruptcy, and remaining unsatisfied as aforesaid, in manner following, that is to say; the sum of —— pounds, part thereof at the expiration of one year from the date hereof; the sum of —— pounds, other part thereof, at the expiration of two years from the date hereof; and the sum of —— pounds, the residue of the said debt, at the expiration of three years from the date hereof (*a*): As, &c.

(*a*) If with interest, add—

"with interest thereon, at the rate of *5l. per cent.* from the date hereof, on so much of the said debt hereby agreed to be paid as shall from time to time remain unpaid, such interest to be added to and paid simultaneously with the said several instalments as they shall respectively become due."

TO PAY DEBT CONTRACTED DURING INFANCY.

AGREEMENT *to pay Debt contracted during Infancy.*

Parties.

AGREED this —— day of ——, 18—, BETWEEN [*debtor*], of &c., of the one part; and [*creditor*], of &c., of the other part.

WHEREAS the said [*debtor*] lately carried on and still carries on the trade or business of a ——, and in the

TO PAY DEBT CONTRACTED DURING INFANCY.

course of his dealings and transactions in such trade or business became indebted unto the said [*creditor*], but the said [*debtor*] at the time of contracting such debt was under the age of twenty-one years, and was, therefore, it is apprehended, incapable by law of rendering himself liable to the payment of the said debt; AND WHEREAS the said [*debtor*] has now attained his majority, and, as well in consideration of the advantage derived by him in respect of the said debt (*a*), and to discharge his moral obligation to pay the same, as also for the considerations hereinafter mentioned, is desirous to subject himself to the payment of the said debt in manner hereinafter contained: Now, therefore, for the considerations aforesaid, and also in consideration that the said [*creditor*] hath already assisted the said [*debtor*] by loans of money, recommendations, and otherwise, in the conduct and carrying on of his said business, and particularly in consideration that the said [*creditor*] has this day, at the request of the said [*debtor*], induced [*certain persons, naming them*], to open an account with and become the customers of the said [*debtor*] in his said trade or business of a ——, the said [*debtor*], for himself, his executors, and administrators, hereby undertakes and agrees with the said [*creditor*], his executors or administrators, that he the said [*debtor*], his executors or administrators, will, on the —— day of ——, (when the credit originally agreed to be given to him in respect of the said debt will expire), pay or cause to be paid unto the said [*creditor*] the said sum of —— pounds, and will not set up or plead his infancy as a bar to any action which the said [*creditor*] shall bring for the recovery of the same: As WITNESS, &c.

(*a*) It is conceived, that in the case of an agreement to pay a debt contracted during infancy, the admission of the benefit received would be a sufficient consideration to support the promise. It will be observed, that the word "debt" is here used in a moral sense, as distinguished from its legal signification; for where there is no legal obligation to pay, there is in that sense no debt.

ANNUITY (*a*).

AGREEMENT *for granting an* ANNUITY *for the Life of the Grantor, or for the Life of the Grantee, or for the Lives of other Persons, to be secured on* FREEHOLD, COPYHOLD, *or* LEASEHOLD *Premises, with or without a* SURETY.

(*a*) In consequence of the alterations that have been made in the law of annuities by the recent statutes, and the numerous cases decided since the publication of the former edition of this work, the present Editor has found it impossible to do justice to the subject, without abandoning altogether the arrangement of Mr. Bythewood, by which the points were scattered through the notes to the precedents, in order to present a more concentrated, as well as amplified view of this important branch of law.

STAT. 17 GEO. 3.

As one of the principal points requiring attention in preparing grants of, and securities for, annuities, is to ascertain that the several statutory provisions respecting them have been complied with, we shall at once proceed to shew what those provisions are:—

Repealed stat. 17 Geo. 3, c. 26.

By stat. 17 Geo. 3, c. 26, (which was the first of these acts, and is now repealed), after reciting that 'the pernicious practice of raising money by the sale of life annuities hath of late years greatly increased, and is much promoted by the secrecy with which such transactions are conducted,' it is enacted, "That a memorial of every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall be granted for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives, shall, within twenty† days of the execution of such deed, &c. be enrolled in Chancery; and that such memorial shall contain the day of the month, and the year when the deed, &c. bears date, and the name of all the parties, and for whom any of them are trustees, and of all the witnesses; and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same, otherwise every such deed, &c. shall be null and void."

Memorial to be enrolled in Chancery.

† By the late act, the period is *thirty* days.

Sect. 2, requires a like memorial as to annuities already granted.

STAT. 17 GEO. 3. As to annuities antecedently granted.

Sect. 3, provides that "the consideration really and *bonâ fide* (which shall be in money only), and also the name or names of the person or persons by whom and on whose behalf † the said consideration, or any part thereof, shall be advanced," shall be "fully and truly set forth and described in words at length," or the deeds to be void.

Consideration money, and the names of the persons advancing same, to be stated.

Section 4. "If any part of the consideration shall be returned to the person advancing the same, or in case the consideration, or any part of it, is paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, or if the consideration, or any part of it, is paid in goods, or if any part of the consideration is retained on pretence of answering the future payments of the annuity, or any other pretence, it shall be lawful for the person by whom the annuity or rent-charge is made payable, to apply to the Court, in which any action is brought for payment of the annuity or judgment entered, by motion to stay proceedings on the judgment or action; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, instrument, or other assurance, to be cancelled, and the judgment, if any has been entered, to be vacated."

If any part of consideration money be returned, or be paid in notes, which shall not be paid, &c., or if any part of consideration money be paid in goods, or be retained, &c. grantor may apply to the Court to order deeds to be cancelled.

Section 5, makes regulations as to the enrolment.

Mode of enrolment.

Section 6, declares, "All contracts for the purchase of any annuity with any person under twenty-one to be void, notwithstanding any attempt to confirm the same after twenty-one; and persons dealing with infants are guilty of a misdemeanor.

Contracts with infants void.

By section 7, solicitors, &c. charging for brokerage more than ten shillings for every one hundred pounds, are guilty of a misdemeanor.

Procuration money.

Section 8, provides, "That nothing in this act contained shall extend to any annuity or rent-charge given by will, or by marriage settlement, or for the advancement of a child; nor to any annuity or rent-charge secured upon lands of equal or greater annual value, whereof the grantor was

Act not to extend to annuities given by will, &c., or secured upon lands in fee-simple, &c.

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† Upon these words it was held, that if the consideration were paid by an agent, it should be so stated in the deed. *Dalmer* v. *Barnard*, 7 D. & E. 248; *Glasse* v. *Mount*, Ib. 390; *Askew* v. *Mackreth*, 1 B. & P. New Rep. 231. But these decisions are not applicable to the new act; nor even, under the old act, was it requisite to state that the payment was made *to* the agent of the grantee, the rule being *qui facit per alium facit per se;* but the application of this principle was thought to be excluded in regard to the person *paying*, by the words in the act. *Phillipps* v. *Crawfurd*, 9 Ves. 220; *S. C.* 2 Bos. & Pull. New Rep. 141.

Payments *by* agents to be stated as such.

STAT. 17 GEO. 3. or without pecuniary consideration.

seised in fee-simple or in fee-tail in possession at the time of the grant†, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity granted without regard to pecuniary consideration; nor to any annuity or rent-charge granted by any body corporate, or under any authority of trust created by act of Parliament; nor to any annuity where the sum to be paid does not exceed ten pounds annually‡, unless there be more than one such last-mentioned annuity from the same grantor or grantors to or in trust for the same person or persons.

53 Geo. 3, c. 141.

Next follows the stat. 53 Geo. 3, c. 141, which, after repealing the act of the 17th of George the Third, except so far as regards any annuities granted before the passing of the act, by section 2, provides, "That within thirty days after the execution of every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, a memorial of the date of every such deed, bond, instrument, or other assurance, of the names of all the parties and of all the witnesses thereto, and of the person or persons for whose life or lives such annuity or rent-charge shall be granted, and of the person or persons by whom the same is to be beneficially received, the pecuniary consideration or considerations for granting the same, and the annual sum or sums to be paid, shall be enrolled in the High Court of Chancery, in the form or to the effect following, with such alterations therein as the nature and circumstances of any particular case may reasonably require:—

Within thirty days, grants of annuities to be enrolled in Chancery.

Form of memorial.

Act extended to equitable interests.

† This was held to extend to equitable interests; and an equity of redemption of the proper annual value was sufficient. *Amhurst* v. *Skinner*, 12 East, 263; *Tucker* v. *Thurstan*, 17 Ves. 131. The new act, however, removes all doubt as to the intention of the legislature on this point, by requiring (in section 10) that the annual value should be over and above "the interest of any principal sum charged or secured" on the property.

‡ This exception is omitted in the late act, because, as Mr. Bythewood observed, it was the practice of money-lenders "to divide the consideration into several parts, and make the persons wanting the money grant annuities of 10*l.* to different persons, to the amount agreed upon, whereby the expenses of the grantor were increased to a considerable amount, and publicity to the transaction avoided."

Date of Instrument.	Nature of Instrument.	Names of Parties.	Names of Witnesses.	Name or Names of person or persons by whom Annuity or Rent-charge to be beneficially received.	Person or Persons for whose life or lives the Annuity or Rent-charge is granted.	Consideration and how paid.	Amount of Annuity or Rent-charge.
10 August, 1813.	Indentures of Lease and Release	A. B. of one part. C. D. of other part.	E. F. of ——. G. H. of ——.	C. D.	A. B.	£100 paid in Money. £500 paid in notes of the governor & company of the bank of England, or other notes or bills of exchange, as the case may be.	£100 a year.
Same date.	Bond in Penalty of £1200.	A. B. to C. D.	E. F. G. H.	For securing the same Annuity (or Rent-charge).			
Same date.	Warrant of Attorney to confess Judgment on the same Bond.	A. B. to I. K. & L. M. Attornies of Court of King's Bench.	E. F. G. H.				

STAT. 53 GEO. 3.

otherwise every such deed, bond, instrument, or other assurance, shall be null and void to all intents and purposes.

Companies to be described by their usual firm.

III. That if any such annuity shall be granted by or to or for the benefit of any company exceeding in number ten persons, which *company shall be formed for the purpose of granting or purchasing annuities, it shall be sufficient in any such memorial to describe such company by the usual firm or name of trade.

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Names of parties beneficially interested, to be stated.

IV. That in every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted or attempted to be granted for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, where the person or persons to whom such annuity shall be granted or secured to be paid, shall not be entitled thereto beneficially, the name or names of the person or persons who is or are intended to take the annuity beneficially, shall be described in such or the like manner as is hereinbefore required in the enrolment, otherwise every such deed, instrument, or other assurance shall be null and void.

Copies of the deeds or instruments securing such annuities, may be obtained.

V. And, That in case any person or persons, by whom any annuity or rent-charge, of which such particulars as aforesaid are hereby required to be enrolled, shall for the time being be payable, shall be desirous of obtaining a copy of every or any deed, bond, instrument, or other assurance, whereby such annuity or rent-charge was granted, and of such his, her, or their desire shall give twenty-one days' notice in writing to the person or persons for the time being entitled to such annuity or rent-charge, such person or persons shall, on or before the expiration of such twenty-one days, unless prevented by fire or other inevitable accident, and in that case, if the assurances shall not be destroyed by such accident, then, as soon after as such impediment shall be removed, send or deliver to the person or persons requiring the same, a copy of every deed, bond, instrument, or other assurance, whereby such annuity or rent-charge was granted, or of such of the assurances as in such notice shall be required;

Charges for copies.

and such last-mentioned person or persons shall, at the time of receiving the same, pay to the person or persons furnishing the same, a sum after the rate of sixpence for every one hundred words contained in every such copy, and also the reasonable costs of sending or delivering the same, and the person or persons holding the original instruments by which such annuity or rent-charge shall be secured, shall suffer the person or persons to whom such copies shall be delivered or sent, to examine the same with

In case of default, to summon party refusing to deliver copies thereof before Judge.

the originals; and in case such copies shall not be sent or delivered, or the person or persons holding the original instruments shall refuse to suffer such copies to be examined therewith according to the direction in this act, it shall be lawful for the person or persons by whom the annuity or rent-charge is payable, to take out a summons from any of his Majesty's Justices of his Courts of King's Bench and Common Pleas, requiring

the person or persons neglecting to send or deliver such copies, or refusing to suffer the same to be examined with the original instrument as aforesaid, to appear before such Judge and shew cause in the premises; and it shall and may be lawful for the Judge before whom such person or persons shall be summoned, to make such order for the production of the instruments by which such annuity or rent-charge shall be secured, and for suffering the complainant to take copies thereof, and examine the same, or the copies delivered, with the original instruments, and otherwise in the premises as to such Judge shall seem meet. STAT. 53 GEO. 3.

VI. That if *any part* of the *consideration for the purchase of any such annuity or rent-charge, shall be returned to the person advancing the same, or in case such consideration or any part of it shall be paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, or if such consideration is expressed to be paid in money, but the same, or any part of it, shall be paid in goods; or if the consideration, or any part of it shall be retained, on pretence of answering the future payments of the annuity or rent-charge, or any other pretence;* in all and every the aforesaid cases, it shall be lawful for the person by whom the annuity or rent-charge is made payable, or whose property is liable to be charged or affected thereby, to apply to the Court in which any action shall be brought for payment of the annuity or rent-charge, or judgment entered, by motion, to stay proceedings on the action or judgment, and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order every deed, bond, instrument, or other assurance, whereby the annuity or rent-charge is secured, to be cancelled, and the judgment, if any has been entered, to be vacated. If any part of consideration money be returned, &c. proceedings against the grantor of an annuity may be stayed.

VII. Directs that a book shall be kept by the clerks of the enrolments in Chancery; and that there shall be paid for every entry twenty shillings only, and the fee of one shilling for every certificate and copy given, and the fee of one shilling for every search in the office, and no more. A book to be kept by the clerks of enrolments.

VIII. That all contracts for the purchase of any annuity or rent-charge with any person, being under the age of twenty-one years, shall be and remain utterly void, any attempt to confirm the same after such person shall have attained the age of twenty-one years notwithstanding: and that if any person shall, either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person, being under the age of twenty-one years, to grant or attempt to grant, any annuity or rent-charge, or to execute any bond, deed, or other instrument for securing the same, or shall advance, or procure or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent-charge to be secured or granted by such infant, after he or she shall have attained his or her age of twenty-one years, or shall induce, Contracts for the purchase of annuities by persons under age to be void.

STAT. 53 GEO. 3.

solicit or procure any infant, upon any treaty or transaction for money advanced or to be advanced, to make oath, or to give his or her word of honour or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent-charge, or the repayment of the money advanced to him or her when under age, or that, when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such annuity or rent-charge, every such person shall be guilty of a misdemeanor, and, being thereof lawfully convicted in any court of assize, oyer and terminer, or general gaol delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment, as the Court shall think fit to award.

Not more than 10*s. per cent.* to be taken for procuration-money.

IX. Persons demanding or receiving any gratuity or reward for the soliciting or procuring the loan and brokerage above ten shillings for every one hundred pounds actually and *bonâ fide* advanced, shall be deemed guilty of a misdemeanor.

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Act not to extend to Scotland or Ireland, nor to annuities granted by will, settlement, &c. nor where secured upon freehold lands, &c.

*X. That this act shall not extend to *Scotland* or *Ireland*, nor to any annuity or rent-charge *given by will or by marriage settlement, or for the advancement of a child, nor to any annuity or rent-charge secured upon freehold, or copyhold, or customary lands in Great Britain or Ireland, or in any of his Majesty's possessions beyond the seas, of equal or greater annual value than the said annuity, over and above any other annuity, and the interest of any principal sum charged or secured thereon, of which the grantee had notice at the time of the grant, whereof the grantor is seised in fee-simple, or fee-tail in possession, or the fee-simple whereof in possession the grantor is enabled to charge at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity, or rent-charge granted without regard to pecuniary consideration or money's worth;* nor to any annuity or rent-charge granted by any body corporate, or under any authority or trust created by act of Parliament.

It will be useful to consider the several clauses of the statute *seriatim*.

SECT. 2.—DIRECTING THE ENROLMENT OF A MEMORIAL WITHIN THIRTY DAYS AFTER EXECUTION.

Thirty days to be exclusive of the day of execution.

The period of thirty days must, like the twenty days under the repealed act (*Ex parte Fallon & Wife*, 5 D. & E. 283), be computed exclusively of the day of executing the assurance. "Suppose," said Lord *Kenyon* in that case, "the direction of the act had been to enrol the memorial within *one day* after the granting of the annuity, could it be pretended that that meant the same as if it were said, that it should be done on the same day on which the act was done? If not, neither can it be construed inclusively, where a greater number of days is allowed."

Securities

To satisfy the word "execution" in this section, it is not necessary that

the deed should have been executed by *all* parties previously to enrolment; and, therefore, it has been held to be no objection to a memorial, that it was enrolled before the execution of the deed *by the* GRANTOR. *Buckeridge* v. *Flight*, 6 Barn. & Cress. 49; *S. C.* 9 Dowl. & Ryl. 113; affirming judgment in *C. P.*, *Flight* v. *Buckeridge*, 3 Bing. 323. But if a party executes after the deed is memorialized, he should execute in the presence of the same witness or witnesses as attested the execution by another party, (*i. e.* of the witness or witnesses whose name or names already appear on the memorial), or without *any* attesting witness; for though the act requires the names of all the attesting witnesses to be stated, it does not require that there should be such witnesses. *Flight* v. *Buckeridge*, 3 Bing. 215. It is requisite to adopt one of these modes, where the deed is to be executed by a person at such a distance from England as to preclude the possibility of its being returned for enrolment within the thirty days.

STAT. 53 GEO. 3. need not have been executed by *all* parties before enrolment.

CONTENTS OF THE MEMORIAL.

CONTENTS OF MEMORIAL.

1. *Date of Instrument.*] This has been decided to mean the date which the instrument bears, and not the day on which it is executed by all the parties. *Buckeridge* v. *Flight*, 6 Barn. & Cress. 49; *S. C.* 9 Dowl. & Ryl. 113; and see 3 Bing. 323. It should seem, however, that the correct course is for the deed to be dated on the day on which it is executed by the party *first* executing; as the enrolment should take place within thirty days from such execution.

Date of instrument.

2. *Nature of Instrument.*] A technical inaccuracy in the description of the instrument, or a partial statement only of its operation, will not, it seems, invalidate the memorial. Thus, an *underlease* for a long term of years, leaving a reversion of ten days in the grantor, has been held to be sufficiently described as an *assignment*. *Capel* v. *Butler*, 2 Barn. & Cress. 251; *S. C.* 3 Dowl. & Ryl. 485. And the term "grant of annuity," has been decided to be an adequate designation of an instrument, which contained, in addition to the grant, a release of a former annuity; *Crowther* v. *Wentworth*, 6 Barn. & Cress. 366; and likewise, of an instrument which operated also as an assignment of stock in the public funds. *Browne* v. *Lee*, 6 Barn. & Cress. 688.

Nature of instrument.

3. *Names of Witnesses.*] It is not necessary to state in the memorial the respective parties whose execution the witnesses attest; *Buckeridge* v. *Flight*, 6 Barn. & Cress. 49; *S. C.* 9 Dowl. & Ryl. 113; and see *Orton* v. *Knight*, 3 Bos. & Pull. 153; nor, of course, is it requisite that persons who saw the execution, but did not attest it, should be mentioned. The objection was taken in a case that has been communicated to the editor, but was soon abandoned.

Names of witnesses.

Under this head of the memorial several points arose in regard to

STAT. 53 GEO. 3. the requisite designation of the witnesses. The act left it doubtful whether the place of residence, &c. of the witnesses, was required to be stated in the memorial in addition to their names. The body of the act (section 2), and the head of the column in the form of the memorial, referred merely to the *names* of the witnesses; but the expression "E. F., *of*," in the part of the column appropriated for the witnesses' names, seemed to indicate that the description should be given; and, accordingly, it was decided that the describing a witness as "clerk to A. B." was not sufficient. *Darwin* v. *Lincoln*, 5 Barn. & Ald. 444; *Smith* v. *Pritchard*, 1 Dowl. & Ryl. 374; but see *St. John* v. *Champneys*, 7 J. B. Moore, 382.

STAT. 3 GEO. 4. This led to the passing of the act of 3 Geo 4, c. 92, which, after reciting the former act, and the form of the memorial therein contained, proceeds as follows: "And whereas the words of enactment referring to such form express only that a memorial of the names of all the witnesses to every such deed, bond, instrument, or other assurance as therein mentioned, should be enrolled as directed by the said act, without providing that any description of the witnesses should be given in such memorial, except as such form is thereby referred to; and such form does not provide that any description should be added to such names except by the addition of the word "of" to the letters "E. F." and "G. H." as aforesaid, as applicable to indentures of lease and release; And whereas, in consequence of such indistinct enactment, it may be doubtful whether it was the intention of the Legislature to require any, or, if any, what description to be added to the names of witnesses in the memorial of any deed, instrument, or assurance to be enrolled as aforesaid; And whereas a very great number of memorials of grants of annuities have, since the passing of the said act, been enrolled, in which the names of the witnesses to the deeds, instruments, or assurances, specified in such memorials, have been inserted without the addition of the place of abode of such witnesses; and it has been inferred, from the use of the word "of," after such letters "E. F." and after such letters "G. H." as aforesaid, that it was necessary to describe each of such witnesses in such memorial as of some place, and in consequence thereof some grants of annuities, made since the passing of the said act, have been, in proceedings in summary applications to courts of justice, which cannot be reviewed in any superior court, deemed null and void, on the ground that no description of the place of abode of the witnesses to some or one of the deeds, instruments, or assurances, by which such grants of annuities have been made, had been inserted in the memorials or memorial thereof enrolled as directed by the said act: And whereas doubts have been entertained whether the construction so put on the said act is the true construction thereof, more especially as the same is so far penal as it renders deeds, instruments, and assurances, of which memorials have not been enrolled in pursuance of the said act, null and void, and the provisions in the said act are not so clear and explicit as the same ought to have been under such circumstances, and the parties claim-

Reciting doubts upon stat. 53 Geo. 3, as to whether the places of abode of witnesses should be inserted in the memorial.

ing under grants of annuities may have been thereby misled, and induced to conceive that it was not necessary under the provisions of the said act to insert in the memorial of any deed, instrument, or assurance, to be enrolled as aforesaid, the place or places of abode of the witness or witnesses to such deed, instrument, or assurance, or any more than the name or names of such witness or witnesses, there being no words in the said act expressly requiring any more to be so inserted, nor any words from which it could be inferred that any more was required to be so inserted, except the word "of" after the letters "E. F." and "G. H." respectively, with reference to one species of assurance inserted in the form of memorial before mentioned; and it is expedient to remove all doubts touching the construction of the said act, with respect to so much of the memorials required by the said act to be enrolled as relates to any description of the witness or witnesses to any deed, instrument or assurance: be it enacted, &c., That by the said act of the fifty-third year of the reign of his said late Majesty, no further or other description of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent-charge is or may be granted, is required in the memorial thereof, besides the names of all such witnesses; and so the said act shall be deemed, construed, and taken.

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Declares no further description necessary than the names of such witnesses.

II. And whereas doubts have also arisen, whether, under the said act of the fifty-third year of the reign of his said late Majesty, the omission to enrol a memorial of any one of the assurances for securing any annuity or rent-charge does not vitiate the whole transaction, notwithstanding the enrolment of a memorial of another deed, bond, instrument, or other assurance granting the same; and it is also expedient to remove such doubts: Be it therefore further enacted and declared, That every deed, bond, instrument, or other assurance granting any annuity or rent-charge, and of which a memorial shall have been or shall be duly enrolled pursuant to the said act, notwithstanding the omission to enrol any other deed, bond, instrument, or assurance for securing such annuity or rent-charge, shall be valid and effectual, according to the intent, meaning, and true effect thereof, notwithstanding a memorial of any other deed, bond, instrument or assurance for securing the same annuity shall not have been duly enrolled pursuant to the said act.

Deed granting annuity, a memorial of which has been enrolled, shall be valid, notwithstanding the omission to enrol any other deed for securing such annuity.

III. *Proviso*, That nothing herein contained shall extend to give any other force or validity to any deed, bond, instrument, or other assurance of which a memorial shall have been duly enrolled as aforesaid, than such deed, bond, instrument, or other assurance would have had if any deed, bond, instrument, or other assurance for securing the same annuity of which a memorial shall not have been duly enrolled, had never been executed.

Act not to give other validity to any deed duly enrolled than it would have had if no other deed had been executed.

IV. This act not to extend to give effect to any deed, &c. declared void by any judgment, &c. at law or in equity, or by any acts or deeds of the

Act not to give effect to any deed declared void, &c.

STAT. 3 GEO. 4. parties thereto, or by any other legal or equitable means whatsoever; nor to prejudice any proceeding commenced on or before the 31st day of May, 1822, upon the ground of a defect in the memorial.

Whether necessary to set forth the christian names of witnesses at length.

Another point raised on the construction of the act in regard to the witnesses was, whether it was necessary to set forth in the memorial their christian names at length, or was sufficient to give the initials of such names, *according to the attestation to the deed:* and it was held that the names should be stated at length. *Cheek* v. *Jefferies*, 2 Barn. & Cress. *S. C.* 3 Dowl. & Ryl. 185; *Metcalf* v. *Bowes*, 5 Barn. & Cress. 258; *S. C. nom. Metcalf* v. Earl *Strathmore*, 7 Dowl. & Ryl. 773.

As this decision would have been fatal to many grants of annuity, (an impression having commonly prevailed that it was sufficient to make the memorial agree with the attestation to the deed), the act of 7 Geo. 4, c. 75 was passed, which, after reciting the second section of the 53 Geo. 3, c. 14, proceeded as follows: "And whereas it frequently happens that the names of witnesses to grants of annuities or other assurances are unknown to the grantees thereof, or their solicitors or agents, otherwise than as they appear by the subscriptions of such witnesses to the attestations of the execution of such grants or assurances, and it might greatly endanger the validity of any such assurance, if any name were inserted in the memorial thereof as the name of any such witness, in any other manner than as the same appears signed by such witness as attesting the execution of such assurance: And whereas a very great number of memorials of grants of annuities have, since the passing of the said act, been enrolled, in which the surnames of witnesses to the deeds, instruments, or assurances specified in such memorials, have been inserted, together with such initial letter or abbreviation of the christian names of such witnesses as appeared subscribed to the attestation by such witnesses of the execution of such deeds, instruments, or assurances, without stating at full length the christian names of such witnesses: And whereas doubts have been entertained, whether, according to the true construction of the said act, it is necessary to the validity of any such grant or other assurance, that the christian as well as surnames of all the witnesses to such deed, grant, or other assurance, should be inserted in the memorial thereof in any other manner than as the same may appear subscribed to the attestation of such deed, grant, or other assurance by such witnesses respectively; and in order to remove such doubts, Be it enacted, &c. That by the said act of the fifty-third year of the reign of his said late Majesty, no further or other name or names of the subscribing witness or witnesses to any deed, bond, instrument, or other assurance, whereby any annuity or rent-charge is or may be granted, is or are required in the memorial thereof, besides the names of all such witnesses *as they shall appear signed to their attestations respectively of the execution of such deed, bond, instrument, or other assurance;* and so the said act shall be deemed, construed, and taken.

Stat. 7 Geo. 4, c. 75.

Reciting doubts upon stat. 53 Geo. 3, c. 14.

Declares no further or other names of witnesses required in memorial than appear in deed.

A similar objection seems to have applied under the old act; but in *Const* v. *Phillips*, 4 Dowl. & Ryl. 344, the Court, in the exercise of its discretion, refused to set aside a warrant of attorney to secure an annuity, on the ground of the christian names of the witnesses not being set out at length, the annuity having been paid for eighteen years; and there appearing to have been an erasure in the memorial. STAT. 53 GEO. 3.

4. *Person or persons for whose life or lives the annuity or rent-charge is granted.*] It is not necessary, though usual, to describe the *cestuis que vie* otherwise than by their names, or to state whether the annuity is granted for their joint or respective lives, or whether for lives absolutely or for years determinable with lives. *Barber* v. *Gamson*, 4 Barn. & Ald. 281. As to the *cestuis que vie*.

5. *Consideration, and how paid.*] A singular objection in regard to the statement of the consideration money was made in a recent case, (*Morris* v. *Jones*, 2 Barn. & Cress. 232), namely, that the sum paid by the grantee was a consideration as well for the annuity as for certain policies of life-insurance, which were at the same time assigned to the grantee for better securing the annuity*. The circumstances were as follow:— On 1st of May, 1818, Jones, the defendant, in consideration of 11,000*l.* paid by Morris, the plaintiff, granted to Morris an annuity of 1429*l.* for sixty years, if he (the grantor) should so long live, and farther secured it by a warrant of attorney; and by *another indenture of assignment of even date and for the same consideration*, assigned to Morris three policies of assurance to the amount of 11,000*l.* on Jones's life, long previously effected, at the annual premium of 659*l.*, and then of the value to sell or surrender of 1135*l.* The annual premium on a new policy for a like sum at Jones's then age, would have been 744*l.* Of this assignment no memorial was enrolled. The grantee admitted that it was the agreement of the parties that he was to receive the annual sum of 7*l. per cent.* on the consideration; that he was to accept an assignment of the above-mentioned policies, and to have the premiums secured to him as a component part of the annuity; and was to keep on foot those policies, and, in case of redemption of the annuity, was to re-assign to the grantor the identical policies. The Court of King's Bench decided that the assignment was valid though not memorialized, being a security for the purchase-money, and not for the annuity; and that the statement in the memorial of 11,000*l.* as Consideration.

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* The usual course is, to include the premium of insurance in the annuity, and then the grantee insures in his own name and at his own expense, the grantor covenanting merely not to do any act by which the policy may become forfeited, or an additional premium become payable, or, in the latter case, to pay such *additional* premium.

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the consideration was accurate, notwithstanding the objection that that sum was paid as well for the annuity as also for something else, namely, some interest or benefit from the policies; for the annuitant would not have purchased the policies as a separate transaction, and they were in truth assigned to ease the grantor from the indirect payment of the larger premium.

Perhaps there was some ground in this case to contend that the transaction was usurious, on account of the principal or consideration money being secured to the annuity creditor by the transfer of the policy of insurance; for it seems to be essential in an annuity transaction, as distinguished from a loan, that the principal should be sunk between the parties. Thus, suppose A., in consideration of 100*l.* received from B., agreed to pay to the latter the annual sum of 7*l.* during A.'s life, and a proportional part up to the period of A.'s decease, and secured the repayment of the 100*l.* on his (A.'s) decease, by an insurance on his life, he covenanting to pay the premiums on such policy, would not such a transaction be usurious, though the principal was not recoverable by the grantee during A.'s life? and can the case be less open to the objection because the premiums were secured indirectly as a component part of the annuity? It is true, that in this case the annuity was granted not for the life of the grantor absolutely, but for sixty years determinable with such life, and therefore there was a possibility of the annuity determining before the insurance money became payable. Perhaps this was considered as taking the case out of the principle in question, as no objection was made on the ground of usury. It will moreover be observed, that though a fund was provided by means of the policy for the repayment of the consideration money, at the grantor's decease, yet *the grantor was under no obligation to pay it.*

Not necessary to state other particulars than those referred to in the schedule.

This concludes the decisions on the several columns of the schedule. And here, it should be observed, that it is not necessary to state in the memorial any particular for which no column or space is appropriated in the form given in the act. Thus, it has been decided not to be necessary to describe in the memorial that the annuity is redeemable; *Yems* v. *Smith*, 3 Barn. & Ald. 206; nor to state a covenant by the grantor not to go beyond the seas without giving notice to the grantee, in order to enable him to preserve a life policy by paying additional premiums, which premiums the grantor covenanted to repay. *Wood* v. *Perrott*, 5 J. B. Moore, 63. Nor is it any objection to the memorial of the warrant of attorney, that it does not state the name of the party at whose suit, or the penal sum for which, the judgment was confessed. *Yems* v. *Smith*, 3 Barn. & Ald. 206; *Barber* v. *Gamson*, 4 Barn. & Ald. 281*.

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* Under the old act, it was decided to be unnecessary to state a clause in the grant providing that execution should not be taken out upon the warrant of attorney until forty days after the day limited for payment of the annuity. *Doe* d. *Mason* v. *Phillips*, 5 M. & S. 369. It was held, however, (for it is presumed, though not stated, that the case arose on the

SECT. 4.—REQUIRING THE NAMES OF PARTIES BENEFICIALLY INTERESTED TO BE STATED.

Names of parties beneficially interested to be stated.

In a late case, an attempt was made to set aside an annuity on an affidavit by the grantor's trustees, that it appeared by the books of third persons, that the consideration money was advanced by them and not by the plaintiff, but the Court refused the application, there being no affidavit by the grantor himself, and the annuity having been paid for ten years; *Dartnall* v. *Marquess Wellesley*, 7 J. B. Moore, 63.

SECT. 6.—AUTHORIZING THE COURT TO VACATE THE SECURITIES, IF ANY PART OF THE CONSIDERATION MONEY IS RETURNED OR RETAINED, &C.

In the case of *Barber* v. *Gamson*, 4 B. & A. 281, the Court of King's Bench decided, that the words "*or any other pretence*" in this section, relate only to *improper* pretences. In that case, it appeared, that, on the grantor's proposal, part of the consideration money was impounded in the hands of the grantee's attorney, to be applied under the direction of the grantor's surveyor in performing covenants to build on the property charged with the annuity, which deposit (except a small part applied in paying the expenses of the securities), was applied in three months accordingly. Upon these facts, the Court refused to set aside the annuity, but discharged the rule, upon the terms, that, during the period of the money being impounded, a proportionate part of the annuity should be rebated or allowed to the grantor.

Discretionary power vested in the Courts by the Legislature.

In this and several other cases the Courts have conceived themselves to be invested by the Legislature with a discretion, either to vacate the securities or not, and to impose terms upon the parties. The same discretion was exercised under a similar clause in the repealed act of the 17 Geo. 3. Thus, in the late case of *Cooke* v. *Tower*, 1 Taunt. 372, the Court discharged a rule which had been granted for setting aside an annuity on account of part of the consideration money being retained by the payment to the grantee's solicitor of a sum of money for negotiating it, the grantee offering to reduce the annuity from 105*l.* to 70*l.* *Girdlestone* v. *Allan*, 1 B. & C. 61; *S. C.* 2 Dowl. & Ryl. 150. And this discretion has, to a certain extent, even been exercised in cases falling within the first and third sections of the old act, though these clauses simply declare the deed void for a defective memorial &c., and do not expressly authorize the Courts, (as in the case of the fourth section relating to the return of the consideration money, &c.) to vacate the security. See *Const* v. *Phillips*, 4 Dowl. & Ryl. 344. It is probable, however, that the Courts would consider themselves more

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stat. 17 Geo. 3), that to memorialize a power to redeem upon six months' notice *terminating on one of the days of payment*, as a power to redeem at *any* time, was bad. *Tringham* v. *Bethune*, 7 Taunt. 429.

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fettered in these cases than the other, the language of the clauses being quite different. (*Vide post*).

Retainer to answer future payments invalidates annuities.

In regard to the provisions of the sixth section of the act under consideration, it will be seen, that where part of the consideration money is retained or deposited with a third person, to answer the future payments of the annuity, the grant is liable to be vacated upon the clear and express terms of the act. In *Mence* v. *Hammond*, 6 J. B. Moore, 391, an annuity was set aside on this ground. Few cases, however, of this simple unquestionable nature arise. The Court has generally to draw its conclusion from more complicated circumstances.

Deduction of professional charges, &c. by grantee's agent.

The deduction or retainer by the grantee's agent of sums of money on account of debts antecedently due to himself, professional charges, &c., has, in several recent cases, been made a ground for setting aside annuities under the present section, and no branch of the requisitions of the statute requires more vigilant attention on the part of those by whom transactions of this nature are conducted. The following statement will serve to shew the principal circumstances by which the Courts were influenced in the several cases in question; though it must be admitted, that in cases of this kind, in which the result depends on the impression made upon the Court by a detailed representation of all the facts, a more satisfactory conclusion can be drawn from the reports themselves, than from *any* summary statement. In the case of *Coventry* v. *Champneys*, 8 J. B. Moore, 302; it appeared, that, previously to 1818, H. and G., being employed by the defendant to raise money for him by way of annuity, to pay off certain former annuities, and for his other occasions, engaged to raise him any sum at the rate of 12*l. per centum*, provided the defendant would pay them (H. and G.) a commission of 9*l. per centum* for their procuration of the money, and the expenses of preparing the deeds; that the Star Life Assurance Company became the grantees of one annuity; one F. St. J. of another; the plaintiff of a third; that H. and G. acted as the plaintiff's agents; that the consideration money was received by them; and that they deducted thereout their commission at the rate of 9*l. per centum*, and placed the remainder to the credit of the defendant on account. The plaintiff C. swore that he actually advanced 1,200*l.* to H. and G. as part of the consideration money for the annuity; and that he never knew of any commission being deducted or retained by H. and G. The executor of another grantee also deposed to his testator's not being privy to the deduction; and he produced an account from the testator's books, shewing that H. and G. debited the testator with his full share of the consideration money, for which the annuity in question was granted. One of the attesting witnesses deposed, that, in 1818, he was employed as the defendant's agent, to raise money by way of annuity, and that he applied to H. and G. as such; that he and M., who were both present at the execution of the annuity deeds, saw the sum of 6,200*l.* duly paid by G. to the defendant, and that no part of it was,

with his or their privity, or to his or their knowledge, returned or repaid by the defendant to G. at the time of the execution of the indenture; after which the deponent and M. left the room. G. deposed, that in *June*, 1818, the defendant, through B. his agent, applied to him and his partner H. to raise money for the defendant by way of annuity: that 6,200*l.* was advanced by the plaintiffs C. and G. and others; and the sum so paid to the defendant by the hands of the deponent G., for the purchase of the annuity in question, was really and *bonâ fide* paid by him, G., into the proper hands of the defendant, in Bank of England notes, of the numbers and dates indorsed on the indenture containing the grant of annuity; and that previously to this payment, H. and G., as the agents of the defendant, had advanced him considerable sums of money; that after the payment in question, a statement of accounts was made by the defendant and G.; and that, upon such statement, the former was found to be justly indebted to H. and G. for money lent to and paid for the defendant by them as his agents, in the sum of 5,427*l.* 1*s.* 4*d.*, which sum the defendant thereupon paid to G.; but that no part of the above sum of 6,200*l.* was deducted or retained by either H. or G. Upon these facts, the Court was clearly of opinion, that H. and G. acting as the agents of the grantees, had retained part of the consideration money, and that, therefore, the annuities must be set aside on the terms of paying the principal, interest, &c., to be computed by the Prothonotary.

So, in the case of *Williamson* v. *Goold*, 8 J. B. Moore, 109, (where one of the objections to the annuity was, that part of the consideration money had been retained), it appeared by the defendant's affidavit, that, in September, 1813, being greatly harassed to discharge certain annuities which he had granted through the medium of one H., and particularly being pressed by H. for payment of 2,290*l.*, as due to six persons to whom annuities amounting to the sum of 2,000*l.* had been previously granted, and being indebted to H. in 400*l.* for money lent by H. to him in August, 1813, for securing the payment of which, with interest, he had executed to H. his warrant of attorney; he, subsequently to September, 1813, contracted with H. that he should procure a further advance of 3,130*l.*, for which he, the defendant, should grant an annuity at the rate of 14¼ *per cent.*; and it was agreed that H. should, out of the 3,130*l.*, discharge to the six persons the arrears so due on account of their several annuities, amounting to about 2,290*l.*; that H. should retain the 400*l.* due to him by the defendant, with interest; and that he should pay to H. 10*l. per cent.* on the 3,130*l.* for his commission. That on the 22d of December, 1813, the defendant met, by appointment, at S., one G., who had about that time entered into partnership with H., for the purpose of the defendant's receiving the 3,130*l.*, and for executing the necessary instruments. That G. having declared himself to be the agent of the plaintiff and other persons, for whom the plaintiff was to become a trustee by

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Retainer of part of the consideration money.

virtue of the proposed annuity, produced to the defendant the engrossment of a proposed grant of annuity, whereby the defendant was to charge certain property with an annuity, during his life, of 590*l.* to the plaintiff, in consideration of 4,130*l.*; that upon the defendant's expressing his astonishment at the increase of the sum, G. stated, that, upon taking an account of the sums due to the six former annuitants, it appeared that they amounted to 1000*l.* more than H. had at first calculated. That after much angry discussion, and after G. had threatened the defendant with legal proceedings on account of the sums owing by him, he executed the indenture of grant to the plaintiff and others, whose names were mentioned in the schedule thereunto annexed. That, at the time of the execution of the indenture, G., as agent to the plaintiff, produced and laid out upon the table, Bank of England notes to the amount of 4,130*l.*, and indorsed the numbers of them upon the indenture, and G. then *retained thereout* 2,290*l.*, *the arrears due of the former annuities; and also* 400*l. due by the defendant to H., with interest thereon, together with a further sum of* 450*l.*, *of which G. declared that* 413*l. was due to H. as agent of the plaintiff for procuration money, and preparing the securities, at the rate of* 10*l. per cent. on such* 4,130*l.*, and the residue of the 450*l.*, for travelling expenses, and trouble of G. and two other persons who accompanied him to S., to witness the execution of the securities. That G. and H., after such deductions, paid to the defendant 990*l.*, or thereabouts, being the balance of the 4,130*l.*, and which was the only part that ever came to the defendant's hands. That G., as the partner of H., conducted the whole transaction on the behalf of the plaintiff and the other grantees; and that neither G. nor H. were at any time the agents for the defendant. The plaintiff stated that he paid the whole consideration money to G., and did not authorize him to retain any part of it; and the attesting witnesses deposed that they saw the money actually paid by G. to the defendant, who put it into his pocket. The payment of the several sums to G. appears to have taken place after the witnesses left the room. Ten years had elapsed since the granting of the annuity. The Court set aside the securities on the ground of the retainer of part of the consideration money by the plaintiff's agent. With respect to the length of time, they referred to the case of *Drake* v. *Rogers*, 4 J. B. Moore, 402, where the Court set aside an annuity on account of a defect in the memorial, after a lapse of twelve years. The learned Judges appeared to think that the charge of retainer applied most strongly to the 350*l.* retained by G. for travelling and preparing the securities, and investigating the title, observing that this was an extraordinary sum, considering, that, as there were prior charges, the title must have been previously investigated, *and that no bill of costs for this sum was produced or delivered,* nor any particulars stated, of which this sum was composed.

As to the length of time.

Bill of costs

It is important to observe, that, in several cases, the non-delivery of a

bill of costs for charges made by the grantee's solicitor to the grantor for preparing securities, has been regarded by the Court as an unfavourable feature in the transaction. In *Henry* v. *Taylor*, 3 Bing. 179, *Best*, C. J. observed, that it was unnecessary to give any opinion on another part of the case, because there was an attorney's bill for 165*l.* for negotiating a loan of 910*l.*, and no explanation given of the items of which the charge was composed. Without explanation, it must be taken to be an unfair charge.

STAT. 53 GEO. 3. should be delivered by solicitor of grantee.

The cases of *Finley* v. *Gardner*, *Davis* v. *Gardner*, *Cole* v. *Gardner*, 6 Barn. & Cress. 165, also belong to the class under consideration. It appeared, that, in *February*, 1818, the defendant G. applied to G. B. W. to raise him the sum of 3000*l.* by way of annuity; that W. applied to one D., who was a negotiator in money transactions; and that the latter introduced W. to one T., as a person having a control over the necessary funds for making the advances required. T. stated, that he could procure the sum required, for an annuity of 430*l. per annum*; that his customary charge was 10*l. per cent.* for law expenses, and 5*l. per cent.* would be required for the agency of D.; but he, T., should require the payment of the first year's annuity to be made; and for this purpose, that the sum of 430*l.* should be deposited in one of the Cambridge banks, in the name of W., who was to draw it out by quarterly instalments, and remit it to T.; W. stated these terms to G., and he assented to them. Deeds were executed by G. on the 7th of March, 1818, for securing, during his life, several annuities. Upon the execution of the deeds, T. paid to G. the full consideration money of 3000*l.* in bank notes, *and immediately afterwards* 300*l. was returned to T.*, (in pursuance of the before-mentioned agreement), *for his charge of* 10*l. per cent. for law expenses in preparing the securities; and the further sum of* 150*l. was returned to D. for his agency charge of* 5*l. per cent.; and at the same time*, 430*l. was deposited with W., for the purpose of securing the first year's annuity;* who paid it into a banker's at Cambridge, and drew out the same from time to time, as it was required to pay the annuity. The affidavits of the plaintiffs in the two first cases denied all knowledge that any part of the consideration money had been returned to T. In the other case of *Cole* v. *Gardner*, the affidavit stated, that the grantee of the annuity was dead, and that the party now entitled to it was a purchaser for a valuable consideration*. The Court thought a part of the consideration money had been returned within the meaning of the sixth section of the act, and made the rule absolute for setting aside the several annuities, on the defendant's paying principal and interest, together with such costs and brokerage as the Master should think reasonable, as well as the costs of the present application.

Retainer of part of the consideration money.

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* This of course was immaterial; the assignee could not be in a better situation than the grantee.

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Again, in *Calton* v. *Porter*, 9 J. B. Moore, 703, where it appeared that, in *October*, 1814, the defendant applied to H. and G. to procure for him a sum of money by way of annuity; that it was shortly afterwards agreed, between the defendant and G., that the former should grant to some client of H. and G. a redeemable annuity of 10*l.* for the sum of 63*0l.*; that, on the 12th *November*, 1814, the defendant executed an indenture of grant accordingly to the plaintiff for the life of the defendant, and that L. A. joined in the deed as surety, and also in a warrant of attorney; that, previously to the execution of the deeds, the defendant was indebted to H. and G. in 90*l.*, which had been advanced by them to him; that, on the said 24th *November*, 1814, and previously to the execution of the securities, G. demanded payment of the said sum of 90*l.* from the defendant, and told him, that he must pay him that sum out of the 63*0l.*, and must also pay him and H. 50*l.* for their charges of preparing the securities: that the defendant, being then greatly distressed for money, had no alternative but to comply. That G. then, as agent of the plaintiff, produced the sum of 63*0l.* in Bank of England notes, and handed the same over to the defendant, who thereupon executed the deed; and that immediately upon such execution, *he returned to G. the said sum of* 90*l.*, *and also paid H. and G. the said sum of* 50*l. for the costs of preparing the securities.* That the defendant had no communication with the plaintiff, but the treaty was entirely negotiated by H. and G. as the agents of the plaintiff. The Court was of opinion, that these circumstances constituted a case of a retainer of part of the consideration money by the grantee's agent, and that the annuity must therefore be set aside on the same terms as in the last case, on the authority of which they particularly relied. *Best*, C. J. remarked, that though H. and G. might be entitled to the 50*l.* charged for costs, *there was no pretence for saying that they had a right to demand or extort from the defendant* 90*l. for the debt previously due to them.*

Remarks upon *Calton* v. *Porter.*

Calton v. *Porter* is certainly a strong case, particularly in reference to the sum of 90*l.* No bill of costs appears to have been delivered for the 50*l.* retained for costs, but the learned Chief Justice grounded his judgment, less on the payment of this sum, than the exaction of the debt of 90*l.* antecedently due to H. and G.; though it was not denied that the latter was a *bonâ fide* debt, the money having been actually advanced to the grantor by them. It has, certainly, always been considered, that if the consideration money be once placed within the control of the grantee, he may simultaneously pay a debt actually due from him to any person out of it; and it is not easy to see the difference in principle between a debt due to the grantee or his agent and any other person, provided a fair opportunity is given to the grantee of paying it or not out of the consideration money. It is probable, that the Court, in this case, conceived that no such opportunity was afforded; and that the exaction by H. and G., pre-

viously to the payment of the consideration money, of a promise from the grantor to pay them the 90*l.*, coupled with the subsequent payment, virtually amounted to a retainer of that sum. STAT. 53 GEO. 3.

Grantee's agent may receive his costs from the grantor out of the consideration money.

It is not to be inferred, however, from the preceding cases, that the grantee's agent is precluded from receiving from the grantor, at the time of the execution of the deeds, out of the consideration money, his bill of costs for preparing the securities, &c., provided this is not made a colourable pretence for extortion. Thus, in *Monys* v. *Leake*, 8 D. & E. 411, 416, which arose under the old Annuity Act, where it appeared that the whole consideration was paid at the execution of the securities, but a demand was made upon the grantor by the clerk or agent of the grantee's attorney, for law charges, which it was originally agreed that the grantor should pay, and which he then paid out of the consideration money; it was attempted to set aside the securities on the ground that part of the consideration money had been retained. Lord *Kenyon* observed, that here all the consideration money was paid to the grantor, who, being indebted to the person who drew the writings for the expense of those writings under a previous agreement, immediately paid the amount of the bill: it was a payment to his attorney under the previous contract. *There is nothing more unreasonable in this, than in his paying any other debt, after receiving the consideration money for the annuity.* So, in *Phillips* v. *Crawfurd*, 9 Ves. 215, 219, where the objection as to the payment of the consideration was, that 30*l.* was paid at the same time by the grantor to the agent of the grantee for the expense of preparing the deeds; the evidence of the agent as to that being, that, after the transaction was completed, he received from the grantor 30*l.*, whether part of the consideration or not he could not say; but that no part of the consideration was retained by him. Sir *W. Grant*, M. R., said, "I suppose, generally, a man who wishes to raise money is at the expenses of preparing the deeds by which that money is procured; and when once it is actually in his possession and power, *it can make no difference whether he pays the attorney, who prepared the deeds, with part of that money, or any other fund.* If an extravagant charge is made, as a colour for reducing the consideration, that is a different case. But nothing of that sort is suggested; as, that part of the 30*l.* got back to the purchaser, &c. If the objection holds, the grantor could not bear even the least proportion of the expense without wholly vitiating the grant; which could not be the intention of the act." Upon an appeal, the Lord Chancellor confirmed his Honour's decree. 13 Ves. 475.

Rule, where the solicitor is himself the grantee.

If the grantee himself be concerned as attorney for the grantor in preparing the securities, he may, equally with any other person, receive his bill of costs; but he must not charge procuration money. *Broomhead* v. *Eyre*, 5 D. & E. 597. In a recent case, where the grantee, who prepared the securities, made a charge for searching for incumbrances, which it ap-

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peared was not done, *Gibbs*, C. J., in an action on the bond, which was alleged to be invalid on this ground, left it to the Jury to say, whether this charge was made with intent to keep back part of the consideration money, or whether it was made through inadvertence; the finding was in favour of the plaintiff, and the Court refused to disturb the verdict. *Hurd* v. *Girdlestone*, 6 Taunt. 8. Though these cases occurred under the old act, the principle seems to apply to the present act.

Of course, where the person concerned as agent for several grantees improperly retains a sum of money for commission and expenses on the several annuities, the *whole* of them is thereby vitiated, though it be proved that the sum retained consisted of a bank note paid him by *one* of the grantees, as part of the consideration money for his annuity. *Jones* v. *Silberschildt*, 4 Bing. 26.

General observations upon the preceding cases.

A review of the cases occurring under this section of the act will serve to shew the necessity of extreme caution in the management of annuity transactions, in avoiding whatever may, by possibility, be construed as a retainer or return of part of the consideration money. The money should be paid to the grantor by the grantee himself, or, at all events, by some agent who is wholly unconnected in previous pecuniary transactions with the grantor, to prevent the annuity being improperly mixed up with those transactions. The employment of the grantor's agent to pay the consideration money, which constitutes him also the agent of the grantee, is therefore always objectionable, and is indeed the circumstance which led to the overturning the securities in most of the preceding cases; for it is observable that, in every instance in which the securities were set aside, the money was paid, not by the grantee himself, but by an agent, whose mis-appropriation of the money formed the ground for invalidating the securities. If the grantor and grantee have separate agents, of course the one is not responsible for the conduct of the agent of the other; and therefore, in a case where, after the grantee had paid down the consideration money, the grantor's solicitor took up part of it for costs, before the money actually reached the hands of the grantor, it was held, that the grantee was not affected by this act. *Mootham* v. *How*, 5 Taunt. 596. If there have been any previous accounts between the grantor and grantee themselves, the consideration for the annuity should be kept quite distinct from them. Where a demand is made on the grantor for the costs of preparing the securities (as it commonly is) a bill of costs should be regularly delivered, and the consideration money should first be paid over to the grantor, so as to afford him an opportunity of paying it out of such money or not, or of making any objection to the charges, which should be fair and reasonable, and made out in detail in the usual manner. If any unfairness or extortion be practised, the Court, we have seen, will not be baffled in its authority to set aside the securities by any technical or colourable compliance with the terms of the act: as,

by paying the whole consideration money to the grantor, in the presence of the attesting witnesses, and then, the latter having left the room, dealing with it in a manner directly at variance with the spirit and intention of the Legislature, by paying to the grantee's agent large sums for commission &c., retaining sums to pay the arrears of former annuities, and other such purposes. STAT. 53 GEO. 3.

SECT. 10.—EXCEPTING OUT OF THE ACT ANNUITIES GRANTED BY WILL, &c.

What annuities not necessary to be enrolled under stat. 17 Geo. 3.

The act of 17 Geo. 3, c. 36, only extended to annuities granted for a "pecuniary consideration." Under this statute, therefore, it was necessary only to register those annuities, which were granted in consideration of *something paid*. Thus, where an annuity was granted in consideration of the grantee resigning his situation as master of an academy, in favour of the grantor, it was decided that a memorial of the grant need not be registered; even though, at the time of the grant, the grantee agreed to assign to the grantor his household furniture at an appraised value, and to lend a sum of money to the grantor, to be repaid with interest. *Hutton* v. *Lewis*, 5 D. & E. 639; *S. C.* Hunt. 343, 2d ed.; *Crespigny* v. *Wittenoor*, 4 D. & E. 793. So, it was decided, that no memorial was necessary to be enrolled of a grant of an annuity in consideration of the grantee resigning her trade and leasehold premises to the grantor, though part of the consideration was book debts and stock in trade. *Doe* d. *Johnstone* v. *Phillips*, 1 Taunt. 356. Again, where a bond was given to secure an annuity by the obligor to his mother, in alleged consideration of natural love and affection, in which bond the defendant joined as surety; and it appeared that, on the occasion of this bond being given, the mother had sold her trade, and with the money arising therefrom, and what other money she possessed, had placed out her two sons in business; and it was agreed, that in consideration thereof they should give her two annuity bonds, of which the present was one: The Court thought that this case was governed by *Doe* d. *Johnstone* v. *Phillips*, 1 Taunt. 356, and that the bond did not require enrolment; *Keats* v. *Hick*, 5 J. B. Moore, 629; and the judgment of the Court of Common Pleas was affirmed on a writ of error in the King's Bench. See 2 Barn. & Cress. 69.

What annuities need not be enrolled under stat. 53 Geo. 3.

In the 10th section of the late Annuity Act, the exception in question extends to "any voluntary annuity or rent-charge granted without regard to pecuniary consideration *or money's worth*." But the words "money's worth" have received a narrow construction, having in many instances been considered as applying only to cases in which the object of the annuity was to raise money, and not where it was granted in consideration of the conveyance of an estate, or as part of a family arrangement; though the grantor received a valuable consideration at the time of granting it. Thus, in the case of *James* v. *James*, 2 Brod. & Bing. 702; *S. C.* 5 J. B. Moore, 479, where, in a bond for securing an annuity, it was recited that

Where granted in consideration of the convey-

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the obligee was entitled to an interest in certain veins of coal for her life; and that, by indenture bearing even date with the bond, she had assigned such interest to the obligors, who, in consideration thereof, had agreed to pay her an annuity for her life; and the bond was then conditioned for the payment of that annuity. The Court of Common Pleas decided, that such an annuity was not within the act; which, it was considered, extended only to cases where the object of the grantor was to raise money either directly in money, notes, or bills, or else indirectly by goods, and not to any case of a *boná fide* sale of landed property, whether freehold (of inheritance), for life, or leasehold for years, in consideration of an annuity.

In the case of *Blake* v. *Attersoll*, 2 Barn. & Cress. 875; *S. C.*, 4 Dowl. & Ryl. 549; the plaintiff was, by his marriage settlement, entitled for life to the annual produce of 10,000*l.*, which his wife's father agreed to settle as her fortune. The father died in impoverished circumstances without having performed his agreement. The plaintiff secured by mortgage on his own estates a substituted sum of 10,000*l.* to the trustees of the settlement, in consideration of the father's executors paying to him for his own use 5,000*l.*, *and securing to him by their bond an annuity equivalent to the interest of the* 10,000*l. for his own life.* The executors, therefore, in their representative capacity, received a benefit of 5,000*l.* in exchange for the annuity. This bond was not enrolled. The Court of King's Bench held that the annuity was not within the act; observing, that, to bring an annuity within the act, there must be an actual *sale* of the annuity for money, bills, or goods. The Court viewed the transaction as a voluntary gift by the plaintiff of 5,000*l.* to his settlement trustees, and a concession by him of 10*s.* in the pound on the amount of the interest of that sum of 5,000*l.*, which the father's estate proved insufficient to satisfy.

Where, though money passes, there is no actual sale.

So, in the late case of *Tetley* v. *Tetley*, 4 Bing. 214, where an action was brought on a bond given to secure an annuity of 10*l.* to the obligor's father and mother for their lives, in consideration of their giving up to him a farm and farming stock worth 300*l.* It was objected that the bond was void for want of enrolment; but the Court held that this was not a consideration for "money's worth" within the meaning of the act; which only applied to cases in which the object was to raise money or goods to be converted into money by the grantor; and not to such a case as the present, where the securing the annuity was part of a family arrangement.

Annuity granted in consideration of farm and farming stock.

The exception under consideration also extends, it will be observed, to annuities secured on freehold and copyhold lands of inheritance in possession, of equal or greater annual value than the annuity, over and above any other annuity, &c. which, it is clear, embraces *equitable* interests, as was decided under the old act. *Amhurst* v. *Skinner*, 12 East, 263; *Tucker* v. *Thurstan*, 17 Ves. 131.

It has been held, that a person who concurs in the grant as surety, is a grantor within the meaning of the section of the act. And, therefore,

Enrolment not necessary where secured on lands of surety.

where A. and B. granted an annuity to C., secured on the real estate of A., who it was declared joined in the grant as surety for B., the estate being of sufficient annual value, it was held that the securities did not require enrolment. *Darwin* v. *Lincoln*, 5 Barn. & Ald. 444. If an annuity be secured on lands in fee of equal annual value, it is of course immaterial that the annuity be also secured upon leasehold property. *Ex parte Mitchell*, 2 East, 138. In practice little advantage is taken of this exemption; for, to prevent any question or mistake as to the adequacy of the value of the lands, it is usual to memorialize the annuity without regard to their value.

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Consequences of Annuities being rendered void, or liable to be vacated by the provisions of the Act.

It will be perceived that there is a material distinction between the 2d and 4th sections, directing the enrolment of the memorial, and requiring the names of the parties beneficially entitled to be inserted in the deed, and the 6th section, providing for the case of any part of the consideration money being returned, &c. By the two former, the deed, which is defective, is simply declared to be null and void; in the latter, it is merely provided, that *it shall be lawful* for the party to apply to the Court in which any action shall be brought, or judgment entered, &c., to stay proceedings; and *it shall be lawful for the Court* to order *every* deed &c. to be cancelled, and the judgment to be vacated. It should seem, therefore, that, in the latter case, the application to the Court by motion, is the only mode of avoiding the securities, and that the circumstances mentioned in the 6th section would form no defence to an *action* brought on such securities. Another consequence of this difference in the language of the clauses in question is, that in cases falling within the 2d and 4th sections, namely, where the security is void for want of a sufficient memorial, or by reason of the names of the parties beneficially entitled not being stated, a Court of law has no jurisdiction over the securities other than the warrant of attorney and judgment, and cannot order the grant and the bond to be cancelled, notwithstanding that the defect in the memorial applies to these; *Storton* v. *Tomlins*, 10 J. B. Moore, 172; *S. C.* 2 Bing. 475. See also *Ex parte Chester*, 4 Durn. & East, 694; *Denne* v. *Dupuis*, 11 East, 134; *Appleby* v. *Smith*, 3 Anst. 865; though, if any action were brought upon the bond or covenant in the grant, the defect in the memorial of such instrument would, of course, be a defence to the action. In order to obtain possession of the deeds in such cases, the grantor may file a bill in equity, which was done in many instances under the old act; *Byne* v. *Vivian*, 5 Ves. 604; *Byne* v. *Potter*, Ib. 609; *Bromley* v. *Holland*, Ib. 610; *S. C.* Coop. 9; *Hoffman* v. *Cooke*, 5 Ves. 623; and the Court, it seems, will direct a reconveyance, though in strictness this is unnecessary, as the act declares the deeds to be

Variation in the cases where the memorial is defective, and where part of the consideration money is returned, &c.

Court of law cannot compel the delivery of deeds void on account of defective memorial.

Grantor's remedy in equity.

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void. In *Bromley* v. *Holland*, Coop. 9, Lord *Eldon* was of opinion, that it was proper to have the trustee of the legal estate before the Court, and to pray that he might be directed to re-convey, especially as a Court of law had previously refused to set aside the annuity. And here it should just be noticed, that a suit in equity to declare the securities void, and for a re-delivery of the deeds, may be made in the first instance without any previous application to a court of law; and the fact that such an application has been unsuccessfully made is immaterial. *Bromley* v. *Holland*, Coop. 9. Indeed, it sometimes happens, that it is in a Court of equity alone, in a suit of this nature, or a regular action at law, that a grantor has an opportunity of putting the validity of the securities to the test by obtaining a judicial declaration on the subject; for where the grantee neither enters up judgment on his warrant of attorney, (if he have one), nor brings an action, there are no means of bringing the question summarily before a Court of law. An action of trover, probably, would lie for the deeds, but this would not, as already observed, afford to the grantor a complete remedy, as the Court could not direct a re-conveyance. Such a case, however, as the one supposed, could scarcely arise, except where the annuity bore but a small proportion to the value of the estate; so that the inconvenience to the grantor from the detention of the title deeds might be greater than that to the grantee from the nonpayment of the annuity; and such cases, it is well known, are of rare occurrence.

Terms upon which securities vacated.

The terms upon which Courts of law and equity set aside annuities are the same, namely, the re-payment of the consideration money, with interest, at 5 *per cent.*; *Mence* v. *Hammond*, 6 J.B. Moore, 491; allowing also to the grantee, it seems, disbursements for stamps, attendances, and other charges relating to the conveyances; *Williamson* v. *Goold*, 8 J. B. Moore, 325; but not for premiums paid for life insurances, unless it were agreed that the grantor should pay them. *Burdon* v. *Browning*, 1 Taunt. 520; *Ex parte Shaw*, 5 Ves. 622; *Williamson* v. *Goold*, 8 J. B. Moore, 325; *Hoffman* v. *Cooke*, 5 Ves. 623, 633. If the terms upon which equity directs a re-conveyance, and the deeds to be delivered up, are not complied with, the grantor will lose the benefit of the decree; *Bromley* v. *Holland*, Coop. 25; though the Court would no doubt enlarge the time for a reasonable period, upon application, as Lord *Eldon* has denied the analogy of such a case to a suit by a mortgagor for redemption; Coop. 19; in which it is well known no extension of time is admitted. Courts of law have also acted upon the same principle in the exercise of their summary and discretionary jurisdiction. This occurred in the late case of *Champneys* v. *St. John*, where the facts on the point in question (which are not reported) are as follow:—On the 21st November, 1821, the Court of King's Bench on the defendant's affidavit, granted a rule *nisi* for setting aside the securities, on the ground of part of the consideration money being retained, and the memorial being defective in not stating the names o

Consequence of grantor's not complying with the terms imposed by the Court.

Grantor deprived of the benefit of rule setting aside securities, from non-compliance with the terms.

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the parties by whom the annuity was to be beneficially received, and likewise not truly stating the manner in which and the persons to whom the consideration money was paid. On the 29th Jan. 1822, this rule was made absolute, and it was referred to the Prothonotary to ascertain the amount of principal and interest due, giving the defendant credit for the payments made to him on account of the annuity, and allowing him interest thereon; and that the deeds should be deposited with the Prothonotary until further order. The Prothonotary reported the sum of 12,678*l.* 3*s.* 3*d.* to be due on the 3d of May; and, on the 14th of June, 1823, the Court ordered that, on payment of this sum with interest thereon from that day, the deeds should be delivered up to be cancelled. The payment of this sum not having been made, the Court, on the application of the plaintiff, in January, 1824, *fixed the 12th of February, for the payment, and ordered that, in default, the rule for setting aside the securities should be discharged, and the securities delivered up to the grantee.* This time was several times enlarged; first, to the first day of Easter term following, then to the 20th of May, and afterwards to the last day of Easter term; and payment not having been made on the latter day, the Court, on the 16th of November following, *finally rescinded the order for setting aside the securities.* MSS.

Grantee may bring an action for consideration money, when.

Another course is open to a grantee, whose annuity has been set aside by a rule of Court, namely, to bring an action against the grantor for the consideration money, in which action he must allow him credit for the sums (if any) received on account of it, and interest; and if the grantee has already received more than the principal and interest would amount to, he would of course be nonsuited. *Hicks* v. *Hicks*, 3 East, 16. But the grantee is not bound to wait until the securities have been judicially declared to be void, in order to found his claim to the consideration money; for if the grantor has treated them as such, for instance, if, on the allegation that the annuity was void on account of the memorial being defective or otherwise, he has opened a negotiation with the grantee for a compromise, this would be sufficient to sustain the grantee's action for the consideration money; *Waters* v. *Mansell*, 3 Taunt. 56; *a fortiori*, if, upon the discovery of a defect, he has refused to pay the annuity or execute fresh securities. See *Weddel* v. *Lynam*, 1 Esp. 309. If the grantor has become bankrupt in the interval between the granting of the annuity and its being set aside, his certificate will be a bar to the action. *Walker* v. *Liscarry*, 6 Esp. 98.

No action against surety.

It has been held, that the grantor's claim to a return of the consideration money is confined to the party who received it, and does not extend to a person who joined in the grant as surety, though he signed the receipt. *Straton* v. *Rastall*, 2 D. & E. 366.

AGREEMENT TO GRANT AN ANNUITY SECURED, &c. WITH OR WITHOUT A SURETY.

ARTICLES OF AGREEMENT made and entered into, the —— day of ——, 18—; BETWEEN [*grantor*], of &c., of the one part, and [*grantee*], of &c., of the other part.

Parties.

Agreement to deliver abstract.

FIRST, the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantee*], his executors, administrators, and assigns, to deliver unto the said [*grantee*], on or before the —— day of —— next, at the costs and charges of the said [*grantor*], a full, complete, and perfect abstract of the title of the said [*grantor*], to ALL THOSE (*a*) freehold

FREEHOLD.

COPYHOLD.

(*a*) If the premises be copyhold, say,

"ALL THOSE customary or copyhold messuages, &c. situate, &c. and now held by the said [*grantor*] for an estate of inheritance, according to the custom of the manor of —— in the said county of ——, subject to the rents and services therefore due, and of right accustomed."

FOR LIFE OR LIVES.

If the premises be held for a life or lives, say,

"ALL those messuages, &c. situate, &c. now held by the said [*grantor*] for the life of [*nominee*], of &c. (or lives of [*nominees*], of &c., and the lives and life of the survivors and survivor of them) under and by virtue of an indenture bearing date on or about the —— day of ——, 18—; and made between [*lessor*], of &c., of the one part; and [*lessee*], of &c., of the other part, and afterwards perfected by livery of seisin†; *But* the said [*grantor*] shall not be re-

Reference to lease,

with livery of seisin.

Underlease preferable on granting annuity out of leaseholds.

† There is not any necessity in this instance to say, "subject to the rents, &c." because the grantor should covenant to pay the rents. And in the case of a lease for lives, it is prudent to take an underlease for ninety-nine years, if the nominees should so long live; and in the case of a lease for ninety-nine years, if nominees should so long live, to take an underlease for ninety-eight years, or any less period than ninety-nine years, if the same nominees should so long live; by which means there would remain a reversion in the underlessor, and the underlessee would not be liable to the rents or covenants in the lease, for want of privity of contract and estate with the original lessor, although the underlessee might pay and perform them, in order to preserve his possession. *Vide post*, p 537-8; Vol. 2, p. 52.

messuages, tenements, farms, lands, and hereditaments of the said [*grantor*] situate at ——, in the county of ——; *And if the counsel of the said [*grantee*] (*b*) should be of opinion that the estate of the said [*grantor*] therein is a sufficient security for the annuity hereinafter mentioned, then that he the said [*grantor*] shall and will, within —— from the date hereof, in consideration of the sum of —— pounds, grant unto the said [*grantee*], his executors, administrators, and assigns, an annuity of —— pounds for the life of the said (*c*) [*grantor*], or [*grantee*], to be payable quarterly from the time of granting the same, with a pro-

AGREEMENT TO GRANT AN ANNUITY SECURED, &c. WITH OR WITHOUT A SURETY.

Premises.

[*338]

If title good, to grant annuity.

LIFE OF GRANTOR, OR GRANTEE.

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quired to produce any further evidence of the title to the said premises, than the said lease (and a conveyance thereof from the said [*lessee*] to the said [*grantor*] †."

If the premises be leasehold, for years, or for years determinable on lives, say,

LEASHOLD FOR YEARS, OR FOR YEARS DETERMINABLE ON LIVES.

"All those messuages, &c. situate, &c. now held by the said [*grantor*] for the remainder of a term of —— years, from the —— day of ——, (*or* for the remainder of a term of —— years, if [*nominees*], of &c., any or either of them, should so long live) granted by indenture bearing date on or about the —— day of ——, 18—, and made between [*lessor*], of &c., of the one part, and [*lessee*], of &c., of the other part; *But* the said [*grantor*] shall not be required to produce any further evidence of the title to the said premises, than the said lease (and all subsequent deeds, evidences, and writings, relating thereto)."

Reference to lease.

(*b*) *Vide ante*, p. 81, (*a*).

(*c*) If for the lives of nominees, say,

LIVES OF NOMINEES.

"[*nominees*], of &c., and the lives and life of the survivors and survivor of them, to be payable quarterly from the time of granting the same, with a proportional part thereof up to and inclusive of the day of the death of the survivor of them."

If for years determinable on lives, say,

YEARS DETERMINABLE ON LIVES.

"For the term of —— years, from the day of granting the same, *If* the said [*grantor*] (*or* [*grantee*] or [*nominees*], of &c., any or either of them) should so long live."

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† *Vide ante*, p. 46, 165, 261.

AGREEMENT TO GRANT AN ANNUITY SECURED, &c. WITH OR WITHOUT A SURETY.

portional part thereof, up to and inclusive of the day of his death, and to be charged upon and issuing out of the said hereditaments and premises; and to be further secured by the bond and warrant of attorney to confess judgment of the said [*grantee*] (*d*) in such manner and form, and with such proper and requisite parties, and such usual covenants, remedies, and powers, either of sale or otherwise, for securing the payment thereof, as the counsel of the said [*grantee*] shall advise (*e*); the same several securities (and also a memorial thereof, if the same *should be deemed necessary) (*f*), to be prepared by the said [*grantee*]: but the costs and charges thereof, and of these presents (and a duplicate thereof), and all other costs,

Bond and warrant of attorney.

Usual covenants, powers, &c.

Securities to be prepared by grantee.

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All charges to be paid by grantor.

SURETY.

(*d*) If it be the agreement, say,

" and [*surety*], of &c., as his surety."

LEASEHOLD FOR LIVES.

(*e*) If the premises be leasehold for lives, and it be the agreement, say,

" *And* also a covenant by the said [*grantor*] from time to time to renew the said lease, at his own expense, for another life, when any of the said nominees or any renewed life shall die, and in case of his default a power enabling the said [*grantee*] to do the same, and for the monies and expenses incurred thereby, with interest for the same at five pounds *per centum per annum*, to become a charge on the said premises;"

LEASEHOLD FOR LIVES OR YEARS.

If the premises be leasehold, for lives, or years, say.

" *And also* a covenant by the said [*grantor*] to pay the rents reserved by the said indenture of lease, (*if for lives*, or any renewed lease of the said premises) and in case of his default, a power enabling the said [*grantee*] to pay the same, and for the monies and expenses incurred in consequence of such default, and payment with interest for the same, at five pounds *per centum per annum*, to become a charge on the said premises."

Memorial sometimes unnecessary.

(*f*) If the annuity be within section 10, of the act, a memorial would be unnecessary: however, from an abundance of caution, a memorial is sometimes enrolled in cases where it is not strictly necessary.

Agreement to grant annuity not within the act.

A memorial of an agreement *to grant* an annuity, is not within the act, because it only embraces "deeds, &c. whereby any annuity or rent-charge shall *be granted*." [Where an instrument operates as an agreement to grant an annuity only, of course no action at law can be brought for the arrears. *In re Locke*, 2 Dowl. & Ryl. 603.]

charges, and expenses in any wise attending the granting and securing the said annuity to be paid and borne by the said [*grantor*]; AND ALSO at the execution of the said securities deliver unto the said [*grantee*] all the title deeds and writings in the possession or power of the said [*grantor*] relating to the said hereditaments and premises (*g*). AND THE SAID [*grantee*] doth hereby for him*self, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], his executors and administrators, to pay the sum of —— pounds of lawful money of Great Britain unto the said [*grantor*], at the time of executing

AGREEMENT TO GRANT AN ANNUITY SECURED, &c. WITH OR WITHOUT A SURETY.

To deliver title deeds.

Agreement by grantor to pay purchase money.

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(*g*) If it be the agreement, say,

Grantor to appear, &c. in order that his life may be insured.

"AND which said securities, or one of them, shall contain a covenant by the said [*grantor*], at his own expense, to appear at any office of insurance in London or Westminster, or to produce such vouchers as the office may require, of his residence and health, from time to time, when required by the said [*grantee*], inorder that he may insure any sum of money on the life of the said [*grantor*]; *And also* a covenant by the said [*grantor*] not to go upon the seas, or reside in foreign parts, or serve in any military or naval capacity, or do any other act contrary to the policy on which his life shall from time to time be insured, without giving notice of his intention to the said [*grantee*] at least one calendar month before doing any of the said acts; *And also* a covenant by the said [*grantor*] for payment of any additional premium for insuring any sum on his life, not exceeding —— pounds, in consequence of his doing any of the said acts; *And also* a covenant by the said [*grantor*], at his own expense, to insure such part of the said hereditaments and premises as are liable to be destroyed by fire, in the full value thereof, in some insurance office in London or Westminster, in the joint names of the said [*grantor*] and [*grantee*]; *And also* a proviso or agreement enabling the said [*grantor*] to repurchase the said annuity at any time (after the expiration of *(three)* years from the granting thereof,) on giving *(six)* calendar months' notice for that purpose, and paying all arrears and expenses which shall have been incurred in consequence of the non-payment of any part of the said annuity;"

Not to go on the seas, &c.

and to pay additional premium for going abroad, &c.

Grantor to insure premises against fire.

Power to repurchase.

AGREEMENT TO GRANT AN ANNUITY SECURED, &c. WITH OR WITHOUT A SURETY.

the said securities. (AND *it is hereby further agreed*, that in case the said [*grantor*] should die before the said —— day of —— next, if the said securities, or one of them, should not have been previously executed, then these presents, so far as regards the granting of the said annuity, shall be void) (*h*). IN WITNESS, &c.

If grantor die before executing securities, annuity not to be granted.

As to agreements to grant annuities, &c.

[(*h*) Agreements to grant annuities are not very often entered into†, especially where the annuity is re-purchasable, and the transaction, therefore, is virtually intended to be a loan; the usual course is for the intended grantor to deliver to the intended grantee an abstract of his title; and if the title be approved, the business is proceeded in, and if not, it is abandoned, neither party being under the legal obligation of a contract. Indeed, it is now very common for vendors of *estates* to adopt a similar plan. After the terms of the sale have been arranged, the vendor's solicitor, without any previous written contract, delivers the abstract to the intended purchaser, who, having investigated the title, accepts it or not as he chooses, no legal liabilities having been contracted on either side. This mode of managing the transaction is generally better for the vendor, unless the title has been previously investigated by himself, (as to which *vide ante*, p. 104), since it places it out of the power of the purchaser to involve him in litigation on objections to the title, which the vendor may consider frivolous, and the removal of which may be attended with an expense greatly exceeding in proportion the value of the estate. The purchaser, in such a case indeed, may reasonably say to the vendor, I will not be at the expense of examining your title, unless, if the title prove to be bad, you reimburse me the expenses. Such a stipulation, however, would raise the question, whether the title be good or not, and place the vendor in the dilemma from which it is his object to escape. Where a vendor sells by *auction*, he generally takes care to secure to himself a large deposit, and this gives him a considerable advantage in any disputes as to the title; for it often happens, that a vendor has a title sufficiently defective to prevent his venturing to force it upon a purchaser in a Court of equity, and yet not so defective that a Court of law would allow the purchaser to recover his deposit. (*Vide* an instance of this, *ante*, p. 261). Cases occur every day in practice, in which purchasers are advised not to hazard an action for the recovery of the deposit, though the title is manifestly not such as a Court of equity would pronounce to be free from doubt, and even where the vendor has actually failed in a suit for specific performance. In this and other respects purchasers at auctions would do well to exercise more vigilance than is commonly found on such occasions.]

As to sales by *auction*.

† As to enforcing the performance of such agreements, see *Pritchard* v. *Ovey*, 1 Jac. & Walk. 396.

ASSIGNMENT, *by Indorsement, of an* ANNUITY, *secured by the* COVENANT *and* BOND *of the Grantor; subject to Re-purchase.*

ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

THIS INDENTURE, made the —— day of ——, in the year of our Lord, 18—; BETWEEN the within-named [*grantee*], of the one part; and [*purchaser*], of &c., of the other part(*a*). WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*grantee*] for the purchase of the within-mentioned annuity or yearly sum of —— pounds, at or for the price or sum of —— pounds. AND WHEREAS a judgment was on or about the —— day of —— entered up on the within-mentioned warrant of attorney in his Majesty's Court of King's Bench at Westminster. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said contract or agreement, and for and in consideration of the sum of —— pounds of lawful money of Great Britain and Ireland, by the said [*purchaser*] to the said [*grantee*] in hand paid at or before the sealing and * delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and of and from the same doth hereby acquit, release, and discharge the said [*purchaser*], his executors, administra-

Parties.

Recital of contract for purchase.

Recital of entering up judgment.

Testatum.

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(*a*) It is generally prudent to make the original grantor a party to the assignment of an annuity, at least it should be ascertained that there has been no previous assignment, and that the amount of the annuity has not been reduced by a re-purchase of a part. This information may be generally obtained by application to the grantor. If the grantor be not a party to the assignment, he should have an immediate notice of it, which had better be in writing: this would prevent his pleading want of notice as an excuse for payment of the annuity to the assignor or a subsequent assignee. From an abundance of caution, some gentlemen recommend that the grantor be served with an attested copy of the assignment; however, a short notice in writing is sufficient.

Grantor should be a party to assignment, or have notice of it.

ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

tors, and assigns. *He* the said [*grantee*] *hath* (*b*) bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain &c., unto the said [*purchaser*], his executors, administrators, and assigns, THE within mentioned annuity or yearly sum of —— pounds; AND all powers and remedies for recovering and enforcing the payment thereof; AND ALSO the judgment so entered up upon the within-mentioned warrant of attorney; *And* all benefit and advantage of the said judgment; *and* all and every sum and sums of money to be secured or obtained by virtue thereof; AND all the right, title, interest, claim, and demand whatsoever, as well legal as equitable, of him the said [*grantee*], in, to, and out of the said annuity or yearly sum of —— pounds, judgment, and premises, and in, to, and out of every of them, and of every part and parcel thereof respectively. TO HAVE, hold, receive, take and enjoy the said annuity or yearly sum of —— pounds unto the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— now last past, for and during the life of the within mentioned [*grantor*] or [*nominee*]; *But subject* to such power of re-purchase as is given or reserved to the said [*grantor*] by the within-written indenture. AND TO HAVE, hold, receive, take, and enjoy the said judgment so entered up upon the said warrant of attorney, and all benefit and advantage thereof, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. AND the said [*grantee*] doth hereby nominate and appoint the said [*purchaser*], his executors, administrators, and assigns, the lawful attorney and attornies of him the said [*grantee*] for him the said* [*grantee*], and in his name or in the name or names of his executors or administrators, or any of them, to sue and prosecute any action, execution, or extent upon the said judgment; *and* to acknowledge, make, and give full satisfaction, release, or discharge for the same: AND the said [*grantee*] doth hereby for himself, his executors, and

Assignment of annuity,

and all powers, &c.

and judgment, and all benefit, &c.

and all sums, &c.

All the right, &c.

Habendum of annuity.

Subject to re-purchase.

Habendum of judgment.

Power of attorney to sue, &c. on judgment.

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An assignment of an annuity need not be enrolled.

(*b*) A memorial of an *assignment* of an annuity need not be enrolled, because the annuity act, 53 Geo. 3, c. 141, *ante*, p. 330, only extends to "every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall be *granted*." *Vide post*, p. 448.

administrators, agree to, confirm and ratify all legal acts, matters, and things whatsoever to be done and accomplished by the said [*purchaser*], his executors, administrators, or assigns, in or about the said judgment and premises. AND THE SAID [*grantee*] for himself, his heirs, executors, and administrators doth hereby covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, that the said [*grantee*] hath not at any time heretofore made, done, or committed, or knowingly or willingly permitted or suffered any act, deed, matter, or thing whatsoever, by means whereof the said annuity or yearly sum of —— pounds, or any part thereof are, is, can, shall, or may be charged, impeached, released, or incumbered, or in any wise affected in title, interest, or otherwise howsoever; *Or* by means whereof the recovery and receipt, by the said [*purchaser*], his executors, administrators, or assigns, of the said annuity or yearly sum of —— pounds, and of all future payments thereof, or of any part thereof respectively, can be hindered or delayed: AND MOREOVER that he the said [*grantee*], his executors and administrators, and every person having or lawfully claiming, or who shall or may have or lawfully claim any right, title, or interest, either at law or in equity, in, to, or out of the said annuity, judgment, and premises hereby assigned or intended so to be, or in, to, or out of any part thereof, by, from, under, or in trust for them, or any of them, shall and will from time to time, and at all times hereafter, at the request, costs and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further acts, deeds, assignments, and assurances in the law for the more perfectly and absolutely assigning the said *annuity judgment and premises to the use of the said [*purchaser*], his executors, administrators, and assigns; *And* for the better enabling him and them to recover and receive the said annuity, and all future payments thereof, and every part thereof respectively; *As* by the said [*purchaser*], his executors, administrators, or assigns; or as by his, their, or any of their counsel in the law shall be reasonably devised or advised and required: AND FURTHER, that he the said

ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

Covenant by vendor, that he has not released or incumbered.

For further assurance.

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And that ven-

ASSIGNMENT OF ANNUITY, COVENANT, AND BOND.

dor has not released judgment; and for further acts to secure benefit thereof to purchaser.

[*grantee*], his executors or administrators shall not, nor will at any time hereafter release, vacate, or discharge the said judgment; but shall and will, upon the request and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, do and execute all such further acts, matters, and things whatsoever for better assigning the said judgment to the said [*purchaser*], his executors, administrators, and assigns; and for better enabling him and them to receive and enjoy to his and their own use and benefit all sum and sums of money, lands, tenements, and other benefit and advantage to be obtained by, upon, or by virtue of any extent or execution upon the said judgment, *As* by the said [*purchaser*], his executors, administrators, or assigns; or as by his, their, or any of their counsel in the law shall be reasonably devised or advised and required. AND THE SAID [*purchaser*] for himself, his heirs, executors, and administrators doth hereby covenant and agree with the said [*grantee*], his executors and administrators, that he the said [*purchaser*], his heirs, executors and administrators, or some or one of them, shall and will from time to time, and at all times hereafter, pay unto, and in the mean time save, defend, keep harmless and indemnified, the said [*grantee*], his heirs, executors, and administrators, and his and their lands, tenements, goods, chattels and effects, from and against all costs, charges, damages, and expenses whatsoever which can, shall, or may be sustained or incurred, or which may become payable for or by reason or in consequence of any action or suit, or actions or suits which shall or may be brought or prosecuted in the name or names of the said [*grantee*], his executors, or administrators, or any of them, under or by virtue of any power or authority hereby given, or in pursuance hereof to be given to the said [*purchaser*], his executors, administrators, or assigns; so as the same do not arise or accrue through the collusion or act of the said [*grantee*], his executors or administrators. IN WITNESS, &c.

Covenant by purchaser to indemnify vendor from costs, in consequence of his name being used.

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ASSIGNMENT OF ANNUITY, BOND, AND TERM.

ASSIGNMENT *of an* ANNUITY *charged on Lands, and the Annuity* BOND; *and* ASSIGNMENT *of a* TERM *for securing the Annuity to a new Trustee; or* DECLARATION *that the original Trustee shall be possessed of the Lands,* In trust *for securing the Annuity to the Purchaser; with or without the Grantor joining.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*vendor*], of &c., of the first part; [*vendor's trustee*], of &c., of the second part (*a*); [*purchaser*], of &c., of the third part; and [*purchaser's trustee*], of &c., of the fourth part. WHEREAS by indenture bearing date on or about the —— day of ——, 18—, and made [or expressed to be made] between [*grantor*], of &c., of the first part; the said [*vendor*], of the second part; and the said [*trustee*], of the third part; the said [*grantor*], in consideration of the sum of —— pounds, paid to him by the said [*vendor*], [and which was thereby declared to be the same sum as was mentioned in the condition of the bond hereinafter mentioned,] did give and grant unto the said [*vendor*], his executors, administrators, and assigns, one annuity or rent-charge of —— pounds, to be yearly issuing and payable out of, and charged and chargeable upon *All those* lands and hereditaments, situate, &c. *To have,* receive, and take the same annual sum or yearly rent-charge unto the said [*vendor*], his executors, *administrators, and assigns, for and during the natural life of him the said [*grantor*], payable half yearly as therein mentioned, with a proportionate part thereof, to and inclusive of the day of the decease of

Parties.

Recital of grant of annuity.

Habendum.

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(*a*) *Vide ante,* p. 341, (*a*). If the grantor be a party, he will be the *third party.*

GRANTOR A PARTY.

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

the said [*grantor*], if he should die on any other day than one of the days of payment therein mentioned; *And* with the usual powers of distress and entry, and perception of the rents and profits for recovering and securing the same annuity or rent-charge, as therein mentioned: AND for more effectually securing the payment of the said annuity or rent-charge, the said [*grantor*] thereby (appointed and) demised the said lands and hereditaments unto the said [*trustee*], his executors, administrators, and assigns, for the term of —— years, upon the trusts, ends, intents, and purposes therein mentioned: AND for further and more effectually securing the payment of the said annuity or rent-charge, the said [*grantor*], by his bond or writing obligatory, under his hand and seal, and bearing date on or about the said —— day of ——, 18—, became bound to the said [*vendor*] in the sum of —— pounds, and the said bond or writing obligatory is conditioned to be void on the due and regular payment of the said annuity or rent charge: AND in the said in part recited indenture there is contained a proviso, enabling the said [*grantor*] to repurchase the said annuity or rent-charge of —— pounds, at the price or sum of —— pounds, at any time after the —— day of ——, 18—, on giving (twenty) days notice, and on the other terms therein expressed. AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said annuity or rent-charge of —— pounds, for the life of the said [*grantor*], at or for the price or sum of —— pounds.

With usual powers.

Recital of demise to trustee.

Recital of annuity bond.

Recital of clause for re-purchase.

Recital of contract for purchase of annuity.

Testatum. NOW THIS INDENTURE WITNESSETH, that, in pursuance and part performance of the said agreement, and in consideration of the sum of —— pounds of lawful money of the united kingdom of Great Britain and Ireland, to the said [*vendor*], well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents [in full for the absolute purchase of the said annuity or rent charge,] the receipt of which said sum of —— pounds, he the said [*vendor*] doth hereby acknowledge, and of and from the same sum and every part thereof doth hereby *acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators and

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ASSIGNMENT OF ANNUITY, BOND, AND TERM.

assigns, *He* the said [*vendor*] (*b*) *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or rent-charge of —— pounds in and by the said in part recited indenture, granted, secured, and made payable unto the said [*vendor*], his executors, administrators, and assigns, as hereinbefore mentioned; (*And* all arrears now due thereon,) *Together* with the same indenture; *And* all benefit and advantage thereof, and of the grant and covenants therein contained: AND all the right, title, interest, trust, property, claim, and demand whatsoever both at law and in equity of him the said [*vendor*], of, in, to, or out of the same annuity and premises, and every or any part thereof. TO HAVE, hold, receive, take, and enjoy the said annuity or rent charge of —— pounds hereby assigned or otherwise assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, (henceforth *or*) from the —— day of —— last past, for and during the natural life of the said [*grantor*]; [in as full, absolute, and beneficial a manner, to all intents and purposes whatsoever, as he the said [*vendor*], or his executors or administrators could have enjoyed, received, and taken the same, if these presents had not been made;] *Subject nevertheless* to the proviso contained in the said in part recited indenture, enabling the said [*grantor*] to re-purchase the said annuity or rent-charge, in the manner and on the terms therein mentioned. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations aforesaid, *he* the said [*vendor*] *hath* bargained, sold, assigned, transferred and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*purchaser*], his executors, administrators, and assigns, THE said bond or writing *obligatory, made and entered into by the said [*grantor*]

Assignment of annuity.

All arrears.

Benefit of covenants.

All the right, &c.

Habendum,

Subject to power of re-purchase.

Further *testatum*.

Assignment of bond.

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(*b*) *Vide ante*, p. 342, (*b*).

If the original grantor be a party, say,

GRANTOR A PARTY.

"and by and with the privity, consent, and approbation of the said [*grantor*], testified by his executing these presents."

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

unto the said [*vendor*] in the penal sum of —— pounds, for better securing to him the payment of the said annuity or rent-charge of —— pounds hereby assigned or otherwise assured, or intended so to be; *And* all and every sum and sums of money thereby secured or thereupon recoverable; *And* all the benefit and advantage thereof, [AND all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity of him the said [*vendor*], of, in, to, or out of the same, and every or any part thereof.] TO HAVE, hold, receive, and take the said bond or writing obligatory, and other the premises lastly hereinbefore mentioned to be hereby assigned unto and by the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit (*c*); (AND for the purposes aforesaid he the said [*vendor*] by these presents doth irrevocably make, ordain, nominate, constitute, and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies, for him the said [*vendor*], and in his name, place, and stead, to ask, demand, distrain, sue for, recover and receive, of and from all and every person and persons whom it doth, shall, or may concern to pay the same, all and every sum and sums of money now due or hereafter to become due and payable on the said bond or writing obligatory, and to re-assign or deliver the same to be cancelled; or to act in any other way therein as to him the said [*purchaser*], his executors, administrators, or assigns shall seem meet; (AND one *or more attorney or attornies under him and them from time to time to substitute, depute and appoint for the purposes aforesaid); *He* the said [*vendor*] hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, or administrators, (or his or their substitute or substitutes) shall lawfully do or cause to be done in and about the premises by virtue of these presents.

And all sums, &c.

All the right, &c.

Habendum.

Power of attorney to receive and recover monies secured by bond.

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BREVITY.

(*c*) If brevity be particularly desirable, omit the part in parentheses; and instead of it, say,

Power to receive and recover.

"*With* full power and authority for him the said [*purchaser*], his executors, administrators and assigns, to receive and recover the same."

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

Further *testatum.*

Assignment by old trustee, by direction of vendor and purchaser;

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AND THIS INDENTURE FURTHER WITNESSETH,(*d*) that for the considerations aforesaid, and also in consideration of the sum of five shillings of lawful money aforesaid to the said [*old trustee*] in hand paid by the said [*new trustee*] immediately before the execution of these presents, the receipt whereof is hereby acknowledged, *he* the said [*old trustee*], at the request and by the direction of the said [*vendor*], and at the nomination and appointment of the said [*purchaser*] (*e*) respec*tively testified by their severally executing these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said

and confirma-

(*d*) If the old trustee be continued, instead of assigning the term, say,

OLD TRUSTEE CONTINUED.

Declaration that trustee shall stand possessed of premises, Upon trust, to secure annuity to purchaser.

" *And it is hereby declared and agreed* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*vendor*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns,] That he the said [*trustee*], his executors, administrators, or assigns, shall and will from time to time, and at all times hereafter during the continuance of the said term of —— years, stand possessed of, and be interested in, the said lands and hereditaments, subject as aforesaid; UPON THE TRUSTS, and to and for the ends, intents, and purposes expressed, declared, and contained of and concerning the same in and by the said in part recited indenture; *But so nevertheless* that all benefit and advantage of the same trusts in favour of the said [*vendor*], his executors, administrators and assigns, shall henceforth belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns."

[It is in general better to assign a term to a new trustee, than to rely upon a declaration similar to that in the text, as it is doubtful whether, for some purposes, as a protection against dower, &c. a declaration is equivalent to an assignment.]

(*e*) If the grantor be a party,

GRANTOR A PARTY.

With approbation of grantor.

" and by and with the consent and approbation of the said [*grantor*]"

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

[*vendor*], at the like nomination and appointment of the said [*purchaser*] *hath* ratified and confirmed, and by these presents *doth* ratify and confirm, unto the said [*new trustee*], his executors, administrators, and assigns, ALL THOSE the said lands and hereditaments [in and by the said recited indenture demised unto the said [*old trustee*], his executors, administrators, and assigns, for the term of —— years, upon the trusts, and for the purposes therein and hereinbefore mentioned], and every part and parcel thereof, with their appurtenances: AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever of them the said [*old trustee*] and [*vendor*], or either of them, of, in, to, or out of the same lands and hereditaments, and every part and parcel thereof [under or by virtue of the said in part recited indenture, or otherwise howsoever.] TO HAVE AND TO HOLD the said lands and hereditaments, and all and singular other the premises hereby assigned or otherwise assured, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the said term of —— years now to come and unexpired; *Subject* nevertheless to the rent by the said recited indenture reserved; *And upon the trusts* and to and for the ends, intents, and purposes therein declared and contained; *But so nevertheless* that all benefit and advantage of the same trusts in favour of the said [*vendor*], his executors, administrators and assigns, shall henceforth belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*new trustee*], his executors, administrators, and assigns, by these presents, that he the said [*old trustee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, matter, or thing whatsoever, whereby or wherewith, or by *reason or means whereof, the said lands, and hereditaments [hereby assigned or otherwise assured or intended so to be,] or the said term of —— years therein, or any part thereof respect-

tion by vendor to new trustee of parcels.

All the estate.

Habendum

to new trustee for remainder of term.

Subject to nominal rent.

Upon the trusts contained in the grant.

But the trusts to be in favour of purchaser.

Covenant by old trustee that he has not incumbered.

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ASSIGNMENT OF ANNUITY, BOND, AND TERM.

ively are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. AND THE SAID [*vendor*], for himself, his heirs, executors, and administrators doth covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators and assigns [by these presents in manner following, that is to say;] That for and notwithstanding any act, deed, matter, or thing by him the said [*vendor*] had, made, done, committed, [omitted (*x*)] or knowingly suffered to the contrary, the said annuity or rent-charge of ——, and also the said bond or writing obligatory hereby assigned [or otherwise assured, or intended so to be] respectively, are, and each of them is, at the time of the sealing and delivery of these presents, subsisting and good and valid bo that law and in equity: AND that the said demise is good, valid, and effectual in the law of and for the premises hereby assigned [or otherwise assured or intended so to be] and in nowise surrendered, forfeited, or become void or voidable. AND THAT (*f*) they the said [*old trustee*] and [*vendor*], or one of them, for and notwithstanding any such act, matter, or thing as aforesaid, now have or hath in themselves or himself good right, full power, and lawful and absolute authority to bargain, sell, assign, transfer, and set over the said lands and hereditaments [hereby assigned or otherwise assured or intended so to be] with their appurtenances unto the said [*new trustee*], his executors, administrators, and assigns, [for the residue and remainder now to come, and unexpired of the said term of —— years] in manner and form aforesaid [and according to the true intent and meaning of these presents]; AND ALSO that for and notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*vendor*] [at the time of the sealing and deli-

Covenant by vendor limited to his own acts, that annuity, bond, and lease, are valid and subsisting.

That vendor and trustee have good right to convey.

That vendor has good right to assign annuity and bond.

[(*x*) One of the principal points for the purchaser of an annuity to ascertain is, that the deeds have been properly memorialized, the neglect of which would be an act of *omission*. It is more difficult for him to satisfy himself that other parts of the transaction, such as the due payment of the consideration money, &c. are regular. The present limited covenants would extend to such acts.]

(*f*) This covenant should be omitted when the premises are not assigned to a new trustee.

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very of these presents] hath good right, full power, and lawful and absolute authority to bargain, sell, assign, and transfer the said annuity or rent-charge; *and also* the *said bond or writing obligatory [hereby assigned or otherwise assured or intended so to be respectively] unto the said [*purchaser*], his executors, administrators and assigns in manner and form aforesaid [and according to the true intent and meaning of these presents]: AND FURTHER that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time, and at all times hereafter peaceably and quietly to have, hold, and enjoy, receive, and take the said annuity or rent-charge, and the securities for the same [hereby respectively assigned or otherwise assured or intended so to be,] to and for their and his own use and benefit for and during the natural life of the said [*grantor*], subject as aforesaid, without any suit, trouble, molestation, eviction, disturbance, hindrance, or interruption, of or by him the said [*vendor*], his executors, or administrators, or of or by any other person or persons lawfully claiming or to claim from, by, or under him, them, or any of them, or by his, their, or any or either of their acts, means, consent, neglect, default, privity, or procurement: [AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, and discharged or otherwise by him the said [*vendor*], his executors, or administrators, well and sufficiently protected, defended, saved harmless, and kept indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, leases, assignments, surrenders, forfeitures, rents, arrears of rent, rates, taxes, and assessments, and of and from all other estates, titles, troubles, charges, and incumbrances whatsoever, at any time or times heretofore made, and to be at any time, and from time to time hereafter had, made, done, committed, or knowingly suffered by him the said [*vendor*], or any person or persons lawfully or equitably claiming, or to claim by, from, through, with or under his act, deed, means, consent, privity, neglect, default, or procurement:] AND FURTHER, that he the said [*vendor*], his executors and administrators, and all and every other persons and person lawfully having or claiming, or to claim any estate, right, title, or interest, of,

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For peaceable enjoyment.

Free from incumbrances.

And for further assurance.

ASSIGNMENT OF ANNUITY, BOND, AND TERM.

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in, to, or out of the said annuity or rent-charge, and securities hereby assigned [or otherwise assured or intended so to be] respectively, or any part thereof, by, from, or *under him or them, shall and will from time to time and at all times hereafter, at the reasonable request, and at the proper costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute all and every such further and other lawful and reasonable acts, deeds, assignments, and assurances in the law whatsoever, for further, [better, more perfectly, lawfully and absolutely, or satisfactorily] assigning, confirming and assuring the said annuity or rent-charge and securities, hereby assigned [or otherwise assured, or intended so to be] respectively, and every part and parcel of the same, with their and every of their appurtenances unto the said [*purchaser*], his executors, administrators, andassigns, for and during the natural life of the said [*grantor*] subject as aforesaid, *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, advised, or required and tendered to be made, done, and executed; [*So* as such further assurances, assignments, or conveyances contain or extend to no further or other covenant than against the person or persons making the same; *And so* as the person or persons who shall be required to make the same be not compelled or compellable to go or travel from their respective places of abode for the doing thereof.] AND THE SAID [*purchaser*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*vendor*], his executors, and administrators by these presents, that he the said [*purchaser*], his heirs, executors, or administrators, shall and will at all times indemnify the said [*vendor*], his executorsand administrators, of, from, and against all costs, charges, expenses, damages, and demands, which he, they, or any of them shall pay, sustain, or be put unto for or by reason, or on account of any proceedings to be had at law or in equity by virtue or means of these presents, or of any power or authority herein contained; *So* as the same do not arise or accrue through the collusion or act of the said [*vendor*], his executors or administrators. IN WITNESS, &c.

Covenant by purchaser to indemnify vendor against costs in consequence of using his name.

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

ASSIGNMENT *of an* ANNUITY, *and a* BOND, WARRANT OF ATTORNEY, *and* JUDGMENT; *either with or without an* ASSIGNMENT *of a* POLICY OF INSURANCE; *and* ASSIGNMENT *of a* TERM *for securing the Annuity, to a new Trustee; in which the Grantor joins.*

THIS INDENTURE, made the —— day of ——, in the —— year of the reign, &c. George the fourth, &c. and in the year of our Lord 18—; BETWEEN [*grantee of annuity*], of &c., of the first part; [*old trustee of term*], of &c., of the second part; [*grantor* (*a*) *of annuity*], of &c., of the third part; [*purchaser*], of &c., of the fourth part; [*new trustee of term*], of &c., of the fifth part. WHEREAS, by an indenture bearing date the —— day of ——, 18—, and made, or expressed to be made, between the said [*grantor*] of the first part; the said [*grantee*] of the second part; and the said [*old trustee*] of the third part; *In consideration* of the sum of —— thousand pounds, paid by ([*agent*], of &c., as agent (*b*) for) the said [*grantee*] to the said [*grantor*] being the same sum as is mentioned in the condition of the bond hereinafter mentioned; he the said [*grantor*] did give, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* clear annual sum or yearly rent-charge of —— hundred and —— pounds, for the term of (ninety-nine) years, if the said [*grantor*] should so long live, to be issuing and payable out of all the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments thereinafter mentioned, to be thereby demised, and every part thereof; and to be paid by four equal quarterly payments, on the —— day of ——, *the —— day

Parties.

Recital—of grant of annuity for 99 years, if grantor so long live.

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(*a*) *Vide ante*, p. 341, (*a*).

(*b*) This is not necessary under the new annuity act, *vide ante*, p. 330 *b*, n.

of ——, the —— day of ——, and the —— day of ——, in every year, without any deduction whatsoever (the tax or duty on income or property only excepted); and a proportional part of the said annual sum or yearly rent-charge of —— hundred and —— pounds up to, and inclusive of the day of the decease of the said [*grantor*]: *And* by the said indenture now in recital, the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and detention of possession and perception of rents and profits, in case the said annual sum or yearly rent-charge of —— hundred and —— pounds, or any part thereof, should be in arrear: *And* by the said indenture now in recital the said [*grantor*] did covenant with the said [*grantee*], his executors, administrators, and assigns, for the regular payment of the said annual sum or yearly rent-charge of —— hundred and —— pounds: *And* also did grant, bargain, sell, and demise, unto the said [*old trustee*], his executors, administrators, and assigns, the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments therein particularly mentioned and described, situate in the counties of —— and ——, with their rights, royalties, members, and appurtenances: *To hold* the same unto the said [*old trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture now in recital, for the term of (ninety-nine) years, if the said [*grantor*] should so long live, *Upon* and for the trusts, intents, and purposes therein declared or expressed of or concerning the same, for better securing the payment of the said annual sum or yearly rent-charge: *And* in the said indenture now in recital is contained a proviso enabling the said [*grantor*] to repurchase the said annual sum or yearly rent-charge of —— hundred and —— pounds, upon the terms therein mentioned (*c*). AND WHEREAS

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

With usual powers of distress and entry.

Covenant for payment.

Demise for better securing annuity.

Proviso for repurchasing annuity.

Reference to bond.

(*c*) If there are covenants respecting insurance, say,

POLICY OF INSURANCE.

"*And by the said indenture now in recital* the said [*grantor*] further covenanted with the said [*grantee*], his executors, administrators, and assigns, that he would from

Recital of covenant of grantor to appear, &c. in order

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

the said annual sum or *yearly rent-charge is further secured by the bond of the said [*grantor*], in the penal sum of —— thousand —— hundred pounds, and bearing even date with the said in part recited indenture, and conditioned to be void on the due and regular payment of the said annuity: AND WHEREAS the said annual sum or yearly rent-charge is further secured by a judgment confessed by virtue of a warrant of attorney from the said [*grantor*] for that purpose. AND WHEREAS the said several recited securities have been duly memorialized and enrolled in the High Court of Chancery. *AND WHEREAS there is now due and owing for the arrears

Reference to judgment.

Recital of enrolment.

Recital of arrears due.

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that his life may be insured.

time to time, at his own expense, when required, attend personally at any of the offices of insurance in London or Westminster, or send such vouchers of his residence and state of health, as any such offices should require, in order that his life might be insured and kept insured; *and* upon his leaving, or intending to leave Great Britain, or doing any other act whereby an increased premium would become payable on any policy on which his life might be insured, give notice thereof in writing to the said [*grantee*], his executors, administrators, and assigns, one calendar month at least before doing any such act, in order to prevent any such policy from being avoidable; And would, in case of his doing any such act, or giving notice of his intention to do the same, pay unto the said [*grantee*], his executors, administrators, and assigns, the additional premium which might be demanded at any of the said insurance offices, for insuring any sum not exceeding —— pounds on the life of the said [*grantor*], in consequence thereof. AND WHEREAS the said [*grantee*] hath effected with the (Albion) insurance company an assurance on the life of the said [*grantor*], for the sum of —— thousand pounds; *And* that sum is for the annual premium of —— pounds assured to be paid to the said [*grantee*], his executors, administrators, and assigns, on the decease of the said [*grantor*], by a policy of assurance under the hands and seals of some of the directors of that company, bearing date the —— day of ——, 18—."

And to give notice of leaving the kingdom, &c.

And to pay additional premium in consequence thereof.

Recital of effecting insurance on grantor's life.

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

of the said annuity or yearly rent-charge of —— pounds, up to the day of the date of these presents, the sum of —— pounds and no more, as the said [*grantor*] and [*grantee*] do hereby respectively acknowledge and declare. AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*grantee*], for the absolute purchase of the said annuity or yearly rent-charge of —— pounds, together with all the arrears thereof, at or for the price or sum of —— thousand —— hundred pounds, *Subject* to the right of the said [*grantor*] to repurchase the same under the provisions of the said bond, and a clause or proviso to the like effect in the said in part recited indenture contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of —— thousand —— hundred pounds, of lawful money of Great Britain and Ireland, at or immediately before the sealing and delivery of these presents to the said [*grantee*] in hand well and truly paid by the said [*purchaser*], the receipt whereof he the said [*grantee*] doth hereby admit and acknowledge, and of and from the same and every part thereof doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, administrators, and assigns, *he* the said [*grantee*] *hath* bargained, sold, and assigned, *And* by these presents *doth* bargain, sell, and assign, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or yearly rent-charge of —— pounds, secured or intended to be secured by the said in part recited indenture, bond, warrant of attorney, and judgment respectively; *And* all arrears and future payments thereof; *Together* with the said in part recited indenture, bond, warrant of *attorney, and judgment (*e*), and all and every sum and sums of money to be had or received by virtue thereof respectively; and the full benefit and advantage of all the securities whatsoever, made and given for securing the payment of the said annuity or yearly rent-charge, monies, and premises. AND all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in

Recital of contract for purchase.

Subject to repurchase.

Testatum.

Assignment of

annuity,

and all arrears, with the securities

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and benefit thereof.

All the estate.

(*e*) If there be a policy of insurance, add,

" policy of insurance, additional premium."

POLICY OF INSURANCE.

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

equity, or otherwise howsoever, of him the said [*grantee*], of, in, to, or out of the same premises, and every or any part thereof. To HAVE, hold, receive, take, and enjoy the said annuity or yearly rent-charge of —— pounds, and the securities, monies, and premises hereby assigned or otherwise assured, or intended so to be, and every part thereof, (*Subject* to such right of repurchase as aforesaid (*x*),) unto the said [*purchaser*], his executors, administrators, and assigns, henceforth, to and for his and their own use and benefit absolutely, in the same and as full, ample, and beneficial a manner in all respects, and to all intents and purposes, as the said [*grantee*], his executors or administrators, could or might have done in case these presents had not been made. AND for the considerations aforesaid, and for the better enabling the said [*purchaser*], his executors, administrators, and assigns, to recover and receive the said annuity or yearly rent-charge of —— pounds, and other the monies and premises hereby assigned or otherwise assured, or intended so to be as aforesaid, and to release and discharge the same, or the said in part recited securities, or any of them, *he* the said [*grantee*] hath made, nominated, constituted, and appointed, *And* by these presents doth make, nominate, constitute, and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies, irrevocably, in the name of him the said [*grantee*], his executors or administrators, to ask, demand, sue for, recover, and receive, the said annuity or yearly rent-charge of —— pounds, and the arrears and future payments thereof, and all and every or any other sum or sums of money due or to become due, under the said in part recited securities, or any of them, and every or any part or parts thereof respectively, of and from the person or persons liable to pay the same respectively; [*361] **And* in default of the payment thereof, or of any part thereof respectively, to bring, commence, sue forth, and prosecute any action or actions, suit or suits; or to use

Habendum.

Power of attorney to receive and recover annuity.

[(*x*) These words are tautologous, as the assignment is by the subsequent words expressly made in the same manner as the assignor held the same.]

such other ways and means for compelling or enforcing the payment of the same respectively, as to the said [*purchaser*], his executors, administrators, or assigns shall seem meet; *And* upon the receipt of the said annuity or yearly rent-charge of —— pounds, or the arrears thereof, or other sum or sums of money hereby assigned or otherwise assured, or intended so to be, or any part or parts thereof respectively, to sign, seal, deliver, and give, one or more receipt or receipts, acquittance or acquittances, or other discharge or discharges for the same; *And also* upon the expiration or repurchase of the said annuity or yearly rent-charge of —— pounds, or upon any other occasion, to release the said judgment, or to enter satisfaction for the same upon the record thereof; *Or* to do any other acts or things for avoiding or releasing the said annuity or yearly rent-charge of —— pounds, and all or any of the securities hereby assigned, or otherwise assured or intended so to be: *And* for all or any of the purposes aforesaid to use the name or names of the said [*grantee*], his executors, or administrators: *And* for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies, under him the said [*purchaser*], his executors, administrators, or assigns; and to revoke, alter, and vary, such nomination and appointment at his and their pleasure: *And generally* to do and perform all other acts, deeds, matters, and things, in and about the premises, as fully and effectually to all intents and purposes, as he the said [*grantee*] his executors or administrators, might or could do if personally present and acting therein; he the said [*grantee*] hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do or cause to be done, in or about the premises by virtue of these presents. PROVIDED ALWAYS *nevertheless, and it is hereby declared* between and by all the parties hereto, and particularly the said [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to *the said [*grantee*], his executors and administrators, That he the said [*purchaser*], his heirs, executors, administrators, or

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

Upon the repurchase to release judgment, &c.

Covenant by purchaser to indemnify vendor in consequence of his name being used.

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ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

assigns, shall and will from time to time, and at all times hereafter, pay unto, and in the mean time save harmless and keep indemnified the said [*grantee*], his executors and administrators, of, from, and against all costs, charges, and expenses, which he or they shall or may be put unto, bear, pay, or sustain, for or by reason, or on account of the name or names of the said [*grantee*], his executors or administrators, being used in any action, suit, or other proceeding which may be brought, commenced, or prosecuted, by virtue of the power hereinbefore for that purpose contained. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*purchaser*], his executors, administrators, and assigns (*y*), That the said annuity or yearly rent-charge of —— pounds is now, at the time of the execution of these presents, good, valid, and subsisting, for the said term of (ninety-nine) years, determinable as aforesaid: AND that the same annuity and also the said recited securities are still in force: AND that the same annuity hath not been repurchased, and that the same securities, or any of them, have not nor hath been released, vacated, avoided, or determined. AND that he the said [*grantee*], now hath in himself good right, full power, and lawful and absolute authority, to grant or assign the said annuity or yearly rent-charge of —— pounds, and the securities, monies, and premises hereby assigned or otherwise assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: AND that he the said [*grantee*], his executors or administrators, shall not, nor will at any time hereafter, without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul, all or any of the powers or authorities hereinbefore contained and given to the said [*purchaser*], his executors, administrators, and assigns: AND that it shall or may be lawful

Covenants by vendor, that annuity and securities are

subsisting and in force;

That annuity has not been re-purchased, &c.

For title.

Not to revoke powers.

For peaceable enjoyment.

[(*y*) It will be observed, that these covenants, contrary to the usual practice between vendor and vendee, are absolute. (*Vide* form of *limited* covenants, *ante*, p. 351).]

to or for the said [*purchaser*], his executors, administrators, and assigns, to receive and take the said annuity or yearly rent charge of —— *pounds, and other the monies hereby assigned, or otherwise assured, or intended so to be, when and as the same shall become due and payable, without any let, suit, or interruption whatsoever, of, from, or by him the said [*grantee*], his executors or administrators, or any other person or persons whomsoever; *And* free and clear of and from all charges and incumbrances whatsoever: AND moreover, that he the said [*grantee*], his executors and administrators, and all persons rightfully claiming and to claim any estate, right, title, charge, or interest, in or to the said premises, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said [*purchaser*], his executors or administrators, make, do, and execute, or cause to be made, done, and executed, All such further acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for more effectually assigning or assuring unto or vesting in the said [*purchaser*], his executors, administrators, and assigns, the said annuity or yearly rent-charge of —— pounds, and other the monies hereby assigned or otherwise assured, or intended so to be, and the securities for the same respectively; *And also* authorizing or empowering him or them to receive and obtain payment of the same annuity and monies, *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law shall be reasonably devised or advised and required. AND THIS INDENTURE ALSO WITNESSETH (*f*) that in consideration of the premises, and for and in consideration of the sum of ten shillings of lawful money aforesaid, to the said [*trustee*] paid by the said [*new trustee*] at, or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *he* the said [*trustee*], at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*], testified as hereinbefore is *mentioned

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

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Free from incumbrances.

And for further assurance.

Further *testatum.*

Assignment by old trustee, by direction of vendor and purchaser, to new trustee of

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(*f*) If the old trustee be continued, *vide ante*, p. 349.

OLD TRUSTEE CONTINUED.

ASSIGNMENT OF ANNUITY, BOND, JUDGMENT, TERM, POLICY OF INSURANCE, &c.

hath bargained, sold, assigned, transferred, and set over, *And* by these presents *doth* bargain, sell, assign, transfer, and set over unto the said [*new trustee*], his executors, administrators and assigns, ALL and singular the hereditaments and premises, which in and by the hereinbefore in part recited indenture were demised by the said [*grantor*] to the said [*trustee*], for the term of (ninety-nine) years as therein and hereinbefore mentioned, or were expressed and intended so to be, with the appurtenances:

Parcels.

All the estate.

AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same hereditaments and premises, and every or any part thereof.

Habendum to new trustee for residue of term.

TO HAVE AND TO HOLD the said hereditaments and all and singular other the premises lastly hereinbefore assigned or expressed and intended so to be, with their appurtenances, unto the said [*new trustee*], his executors, administrators, and assigns, henceforth, for and during all the rest, residue, and remainder now to come and unexpired of the said term of (ninety-nine) years, determinable as aforesaid, and for all other the estate, term, and interest of the said [*trustee*] therein;

Upon trusts for securing annuity to purchaser.

NEVERTHELESS upon and for the trusts, intents, and purposes, in and by the said in part recited indenture expressed or declared of or concerning the same; *But so nevertheless*, that all the benefit and advantage of the same trusts by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his executors, administrators, and assigns. *(Add covenant by the old trustee that he has not incumbered, ut ante*, p. 350.) IN WITNESS, &c.

ASSIGNMENT *of an* ANNUITY *for the Lives of two Nominees, (secured by* BOND, *and* WARRANT OF ATTORNEY *upon which* JUDGMENT *has been entered, and* COVENANT *to surrender* COPYHOLDS; *subject to the Grantor's Right to repurchase;) either by the Grantee, or by his Executors or Administrators, or by specific or residuary Legatees, with the Assent of the Executor, or by the Next of Kin, upon an Intestacy, with the Assent of the Administrator; and either where the Copyholds not having been previously surrendered, the Grantee directs, or his Executors or Administrators, or the Persons beneficially interested in the Annuity, with the Assent of the Executor or Administrator, direct, the Grantor to surrender to the Purchaser; or where the Copyholds having been previously surrendered, and the Grantee admitted, he, or his Heir, by the Direction of the Persons beneficially interested, covenants, or his specific or residuary Devisees covenant, to surrender to the Purchaser;* DECLARATION *of Trust by the Purchaser; and* DECLARATION *by the Grantee, or Executor, &c. that the Surrender to be made shall be in Satisfaction of the Grantor's Covenant.*

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

COPYHOLDS TO BE SURRENDERED TO PURCHASER.

DECLARATION.

THIS INDENTURE, made the —— day of ——, in the —— year, &c. and in the year of our Lord one thousand eight hundred and ——; BETWEEN [*grantee*] (*a*), late of

Parties.

(*a*) If the sale be made by the executor or administrator of the grantee, and the surrender of the copyhold has not been made by the grantor, the executor or administrator should be the first party, and the purchaser the other party; but if in that case the surrender has been

BY EXECUTOR ALONE.

HEIR OF

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

——, in the county of ——, *and now of——, in the county of ——, of the one part; and [*purchaser*], of —— Street, ——, in the county of ——, of the other part. WHEREAS [*grantor*], of ——, in the county of ——, Esquire, formerly called [*former name*] only, by his bond or obligation in writing bearing date on or about the —— day of ——, in the year of our Lord one thousand eight hundred and ——, became bound to the said [*grantee*], his executors, administrators, and assigns, in the penal sum of —— hundred pounds; *With a condition* thereunder written for making the same void, if the said [*grantor, present name in this place, and also when mentioned afterwards*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of [*nominee*] of ——, in the county of ——, and [*other nominee*], of ——, in the same county, brothers of the said [*grantor*], and the life of the survivor of them, *One* annuity or yearly sum of —— pounds, free from taxes, and clear of all deductions whatsoever, on four days or times in the year, that is to say; the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— then next ensuing and now past; with the whole or a just proportion of the last quarterly payment, in case of the death of the survivor of them the said [*nominees*], on or previously to any quarterly day of payment as therein mentioned. AND WHEREAS by a certain deed poll, or warrant *of attorney, under the hand and seal of the said [*grantor*] bearing even date with the said recited bond or obligation, he the said [*grantor*] authorized [A. B.] and [C. D.], attornies of His Majesty's Court of Common Pleas at Westminster, or either of them, or any other attorney of the same court, to confess a judgment against him the

Recital of bond for securing annuity.

Condition.

Lives.

Annuity.

Days of payment.

Recital of warrant of attorney to confess judgment upon bond.

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GRANTEE A PARTY.

BY PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &c.

made, the heir of the grantee should be the second party, and the purchaser the third party. If the sale be made by the persons beneficially interested in the purchase money, they should be the first parties, the executor or administrator the second party, the heir, if he be a necessary party, the third party, and the purchaser the fourth party.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

said [*grantor*], in the said Court of Common Pleas, at the suit of the said [*grantee*] in an action of debt upon the said bond, for the sum of —— hundred pounds and costs of suit. And whereas by a certain indenture, also bearing even date with the said recited bond or obligation, and made or expressed to be made between the said [*grantor*] of the one part, and the said [*grantee*] of the other part, *After reciting* or taking notice therein (amongst other things) of the said bond and warrant of attorney, as or to the effect hereinbefore recited, *It is witnessed* that in consideration of the sum of —— hundred pounds by the said [*grantee*], (by (*b*) the hands of [*agent*] of —— Street, London, [*description*], his agent) to the said [*grantor*], in hand paid at the time of the sealing and delivery thereof, the said [*grantor*] did thereby for himself, his heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], should immediately after the execution of the said indenture, at the proper costs and charges of him the said [*grantor*], surrender into the hands of the lord or lords, lady or ladies, of the manor of ——, in the county of ——, for the time being, according to the custom of the said manor, *All those*, &c. with their rights, members, privileges, and appurtenances; *And* all other the lands, tenements, and hereditaments whatsoever, of him the said [*grantor*], holden of the said manor by copy of court roll, *To the use* of the said [*grantee*], his heirs and assigns, *Upon the condition* that if the said [*grantor*], his heirs, executors, or administrators, did well *and truly pay the [*368] said annuity or yearly sum of —— pounds, in manner and form in the said recited bond mentioned and appointed for payment thereof, then the said surrender should be void: and *Upon the trusts* for the perception of the rents, issues, and profits, or for the sale or mortgage of the said hereditaments and premises, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements thereinafter men-

Recital of covenant to surrender copyholds of inheritance.

Parcels.

Use.

Condition.

Trust.

(*b*) The annuity assigned by this form is supposed to have been granted under the old annuity act, by which this was necessary, but it is not necessary under the new act. *Vide ante*, p. 330 *b*, n.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

tioned, expressed, and declared, of and concerning the same, for better securing the due and regular payment of the said annuity unto the said [*grantee*], his executors, administrators, and assigns; and subject thereto, *In trust* for the said [*grantor*], his heirs and assigns: AND in which said indenture is contained a covenant by the said [*grantor*] for payment of the said annuity or yearly sum of —— pounds, and such proportional part thereof as aforesaid, at the days or times and in manner and form appointed for that purpose by the condition of the said recited bond or obligation as aforesaid; *And also* covenants for the title, peaceable enjoyment, and further assurance of the said copyhold premises; *And likewise* a proviso, covenant, and agreement, that when and as often as the said annuity, or any part thereof, or such proportional part thereof as aforesaid, should be behind and unpaid by the space of twenty-one days, Then, and in every such case, it should be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment as he or they should think fit or be advised, for the recovery of the arrears of the said annuity, and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, should bear, pay, sustain, or be put unto by reason of the non-payment thereof; *And* that it should not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause to be revived the said judgment, or to do any thing to keep the same on foot, notwithstanding the same should have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the court in which [*369] *the said judgment should be entered on record to the contrary; *And* that he the said [*grantor*], his heirs, executors, or administrators, should not nor would take or attempt to have or receive any advantage for want of reviving or keeping the said judgment on foot: *And* the said [*grantee*] did thereby covenant with the said [*grantor*] that in case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time thereafter be desirous of repurchasing the said annuity, and of such his desire should give unto the said [*grantee*], his executors,

Recital of covenant for payment of annuity.

Covenants for title, &c.

Power for grantee, on default of payment, to sue out execution on judgment.

That grantee need not revive judgment.

Power of repurchase.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

administrators, or assigns, notice in writing by the space of three calendar months, he the said [*grantee*], his heirs, executors, administrators, or assigns, would, at the end of the said three months, on receiving all sum and sums of money due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to the time of repurchasing the same as aforesaid, and all costs and charges, if any, incurred in consequence of default in payment of the said annuity, accept and take the sum of —— hundred and —— pounds and —— shillings, as and in full for the repurchase of the said annuity; *And* should or would, at the costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, deliver up the said bond to be cancelled, and acknowledge or cause to be acknowledged satisfaction on the record of the said judgment, and surrender the said copyhold premises, or so much thereof as should not have been disposed of under the trusts for sale hereinbefore referred to, to the use of the said [*grantor*], his heirs and assigns, or as he or they should direct; *As* in and by the said recited bond, warrant of attorney, and indenture, (all duly memorialized in the High Court of Chancery, pursuant to the act of Parliament for that purpose made,) reference being thereunto respectively had, may more fully and at large appear. And whereas a judgment was duly entered up in the said Court of Common Pleas against the said [*grantor*], in or as of —— term, in the year of our Lord one thousand eight hundred and ——, at the suit of the said [*grantee*], upon the said bond, for the said sum of —— hundred pounds and costs of suit, in pursuance and by virtue of the said recited *warrant of attorney (*c*); But

Reference to memorial.

Recital that judgment had been entered up.

But that no sur-

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(*c*) If the surrender by the grantor, and the admission of the grantee have been already made, say,

AFTER SURRENDER AND ADMISSION.

"And whereas, at a court baron held in and for the said manor of ——, on the —— day of ——, one thousand eight hundred and ——, the said [*grantor*] surrendered into the hands of the lord of the said manor, by the rod, according to the custom thereof, the said hereditaments

Recital of surrender.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

no surrender of the said copyhold premises or any part thereof, hath been made to the said [*grantee*] by the said [*grantor*], pursuant to the covenant in the said recited indenture for that purpose contained (*d*). AND WHEREAS

render of copyhold premises had been made.

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and premises, with the rights, members, privileges, and appurtenances. *To the use* of the said [*grantee*], his heirs and assigns, *Upon* the same or a like condition to that hereinbefore recited, and *Upon the trusts* and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, mentioned, expressed, and declared of and concerning the same, in and by the said in part recited indenture of the —— day of ——, one thousand eight hundred and ——:

on condition; and upon trusts.

Admission.

AT WHICH court the said [*grantee*] was admitted tenant to the said hereditaments and premises, *To hold* to him, his heirs and assigns, according to the tenor and true intent and meaning of the said surrender, by the rod, at the will of the lord, according to the custom of the said manor, *By* the rents, customs, and services therefore due and of right accustomed."

SALE BY EXECUTOR ALONE.

(*d*) If the grantee be dead, and the sale be made by his executor, without any other person joining in the conveyance, recite, according to circumstances, to the following effect;

Recital of grantee's will, death, and probate, and that one executor declined to act.

"AND WHEREAS the said [*grantee*] duly made and published his last will and testament in writing, bearing date on or about the —— day of ——, one thousand eight hundred and ——; and thereby appointed the said [*executor*] and [*other executor*], of &c., executors of his said will; and afterwards departed this life, without altering or revoking the same; and upon his decease the said [*executor*] only proved the same in the Prerogative Court of the Archbishop of Canterbury, and took upon himself the execution thereof; the said [*other executor*] having declined to act therein."

And instead of the *grantee's* name, substitute the *executor's* in the remainder of the draft, when not otherwise mentioned.

SALE BY PERSONS BENEFICIALLY INTERESTED.

In case of a specific bequest, say,

"AND the said testator in and by his said last will and testament, gave and bequeathed the said annuity or yearly

the said [*purchaser*] hath *contracted and agreed with

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

sum of —— pounds, and all the arrears thereof; and all the securities for the payment thereof; (and the benefit of all policies of insurance which he had effected or might thereafter effect on the life of the said [*nominees*] or either of them), and all the benefit and advantage thereof, unto the said [*specific legatee*], his (*or* unto the said [*specific legatees*] their) executors, administrators, and assigns, (as tenants in common)."

Recital of specific bequest.

In case of a residuary bequest, say,

Recital of residuary bequest.

"And the said [*testator*], in and by his said last will and testament, after making several (devises and) bequests, not comprising the said annuity or yearly sum of ——, gave and bequeathed all the rest, residue, and remainder of his (real and) personal estate and effects, unto and equally between the said [*vendors*] their (heirs), executors, administrators, and assigns."

If the residuary legatee and executor be the same person, say,

Recital that executor is residuary legatee.

"And the said [*vendor*] is the residuary legatee of the same last will and testament, and is thereby entitled to the said annuity or yearly sum of —— pounds, for the life of the said [*grantor*], and the several securities for the same."

Recital of executor's assent to bequest.

"And whereas the said [*executor*] hath assented to the bequest of the said annuity, securities, and policies so made by the said [*testator*] to the said [*vendors*] as aforesaid, as he the said [*executor*] doth hereby admit, acknowledge, and declare, [testified by his executing these presents]."

If the sale be made by the administrator alone on an intestacy, substitute his name for the grantee's in the remainder of the draft, when not otherwise mentioned, and say,

SALE BY ADMINISTRATOR ALONE.

Recital of grantee's death and intestacy.

"And whereas the said [*grantee*] died intestate on or about the —— day of ——, one thousand eight hundred and ——, and the administration of all and singular the goods, chattels, and credits of the said [*grantee*] was, on or about the —— day of ——, one thousand eight hundred and ——, granted or committed to the said [*administrator*] by the (Prerogative) Court of (Canterbury); and

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the said (*e*) [*grantee*] for the absolute purchase of the said annuity or yearly sum of —— *pounds, and of all arrears now due and to grow due for the same, and also the said recited bond, judgment, and all other securities for the same, and all benefit and advantage thereof respectively, at or for the price or sum of —— hundred pounds (*f*); AND upon the treaty for the said *purchase, it was agreed that all and singular the said copyhold premises with their appurtenances, should be surrendered [by the said (*g*) [*grantor*]] to the use of the

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And that copyhold premises should be surrendered.

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the said [*administrator*] is thereby become the personal representative of the said [*grantee*]."

SALE BY PERSONS BENEFICIALLY INTERESTED.

If the sale be made by the next of kin on an intestacy, add,

Recital of being next of kin.

"AND WHEREAS the said [*vendors*] are the children (*or* brothers and sister, (*or* first cousins, *vel cætera*) and only persons next of kin to the said [*grantee*], and as such (they the said [*vendors*], in their own right, and in right of their said wives) are beneficially entitled to the said annuity or yearly sum of —— pounds, and the several securities for the same."

BY EXECUTOR, &c.

(*e*) If by executor, &c.

"[*executor* or *administrator*] or [*vendors*]."

Recital of executor's consent to join in assignment.

(*f*) In case of a bequest, say,

"AND at the request and for the satisfaction of the said [*purchaser*], and for the purpose of affording evidence of his assent to the said bequest, he the said [*executor*] hath agreed to join in the assignment or other assurance of the said annuity and premises, hereby made or intended so to be."

Recital of administrator's consent to join in assignment.

When the administrator is not beneficially interested, say,

"AND the said [*administrator*] at the request of the said [*purchaser*], hath agreed to join in the assignment or other assurance of the said annuity and premises, hereby made or intended so to be, for the purpose of conveying the legal interest thereof, which is vested in him as the administrator of the said intestate."

SURRENDER BY GRANTEE.

(*g*) If the surrender and admission have been already perfected, and the grantee be alive, substitute,

"[*grantee*],"

said [*purchaser*], his heirs and assigns, as hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the sum of —— hundred pounds of lawful money of Great Britain, to the said (*h*) [*grantee*] in hand well and *truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents, the receipt of which said sum of —— hundred pounds, he the said [*grantee*] doth hereby acknowledge, and of and from the same and every part thereof, doth acquit,

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Testatum.

Consideration.

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Or if the grantee be dead, say,

BY HIS HEIR.

"[*heir*] as the customary heir of the said [*grantee*]."

(*h*) If the sale be made by the persons beneficially interested, say,

BY PERSONS BENEFICIALLY INTERESTED.

"[*vendors*] in hand well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, the receipt of which said sum of —— hundred pounds, they the said [*vendors*] do and each (*if more than two* and every) of them doth hereby acknowledge, and of and from the same and every part thereof, do and each (and every) of them doth acquit, release, and discharge the said [*purchaser*], his executors, administrators and assigns, and every of them for ever by these presents; *And also* in consideration of the sum of five shillings of lawful money of Great Britain, to him the said [*executor* or *administrator*] well and truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *They* the said [*vendors*] *have* and each (and every) of them *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *do* and each (and every) of them *doth* bargain, sell, assign, transfer, and set over; *And* the said [*executor* or *administrator*], at the request and by the direction of the said [*vendors*], testified by their severally executing these presents, *hath* bargained, sold, assigned, transferred, and set over, ratified and confirmed; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, ratify and confirm, unto the said [*purchaser*], his executors, &c." *ut supra.*

Nominal consideration to executor, &c.

Assignment by vendors,

and confirmation of executor, &c.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

release, and discharge the said [*purchaser*], his executors, administrators, and assigns, and every of them for ever by these presents *he* the said [*grantee*], *hath* bargained, sold, assigned, transferred, and set over, *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of —— pounds, payable during the lives of the said [*nominees*] and the life of the survivor of them as aforesaid, and all arrears now due and henceforth to grow due for the same, together with such proportional part thereof as aforesaid; AND ALSO the said recited bond, warrant of attorney, judgment, and indenture, so respectively made, executed, and entered up for securing the payment of the same annuity or yearly sum as aforesaid; AND ALSO all and every the trusts, powers, remedies, covenants, and agreements, mentioned and contained in the same indenture, and thereby created, and entered into for securing and enforcing the payment thereof; AND all other the securities for the same; *and* all the benefit and advantage thereof respectively: AND ALSO all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of(*i*) him the said [*grantee*], of, in, to, and out of the said annuity or yearly sum, security, and premises hereinbefore mentioned* and intended to be hereby assigned, and every of them, and every part thereof: TO HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of —— pounds, arrears, securities, and all other the premises hereby assigned or expressed, and intended so to be, and every part and parcel thereof, and all the benefit and advantage thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit absolutely, in as full, ample, and beneficial a manner, in all respects, and to all intents and purposes, as the said [*grantee*], his executors, or administrators could or might have done in case these pre-

Assignment of annuity.

Bond, warrant of attorney, judgment, and indenture.

All covenants, &c.

All other securities, &c.

All the right, &c.

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Habendum.

LEGATEES, &c.

(*i*) If by legatees, &c. say,

"them the said [*vendors*] and [*executor* or *administrator*], each and every of them."

sents had not been made; *Subject nevertheless* to such option or power of redeeming and repurchasing the said annuity or yearly sum, as the said [*grantor*] now hath, or is entitled to, under or by virtue of the said recited indenture, as aforesaid: And for the further and better enabling, authorizing, and empowering the said [*purchaser*], his executors, administrators, and assigns, to recover and receive the said annuity or yearly sum of —— pounds, and all the present and future arrears, and such proportional part thereof as aforesaid, and derive the full benefit and advantage of the several securities for the same (*k*), *he* the said [*grantee*] *hath* made, ordained, constituted, and appointed; *And* by these presents *doth* make, ordain, constitute and appoint the said [*purchaser*], *his executors, [*376] administrators, and assigns, the true and lawful attorney and attornies of him the said [*grantee*], his executors or administrators, in his or their name or names, or in the name or names, and in either case for the sole use and benefit of the said [*purchaser*], his executors, administrators, and assigns, to ask, demand, sue for, recover, and receive of and from the said [*grantor*], his heirs, executors, administrators, or assigns, and all or any other person or persons whomsoever whom it doth or shall or may concern, the said annuity or yearly sum of —— pounds hereby assigned as aforesaid, or expressed and intended so to be; and all arrears now due, and henceforth to become due

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

Subject to grantor's right to repurchase.

Power of attorney to receive and recover annuity.

(*k*) If by persons beneficially interested, say,

PERSONS BENEFICIALLY INTERESTED.

"*They* the said [*vendors*] and [*executor* or *administrator*] *have*, and each and every of them *hath* made, ordained, constituted, and appointed; And by these presents *do*, and each and every of them *doth* make, ordain, constitute and appoint the said [*purchaser*], his executors, administrators, and assigns, the true and lawful attorney and attornies of them, each and every of them the said [*vendors*] and [*executor* or *administrator*], their, each and every of their executors or administrators, in their, each or every of their names or name, or in the name or names of the said [*purchaser*], his executors, administrators, or assigns, and in either case, &c." *ut supra*, p. 376.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

and payable for the same; and also such proportional part thereof as aforesaid: And upon receipt thereof, or of any part thereof, receipts, releases, acquittances, and other good and sufficient discharges, to make, sign, seal, execute, and deliver for the same, or any part or parts thereof respectively: *And* upon the non-payment thereof, or of any part or parts thereof respectively, to bring, commence, institute, prosecute, and carry on any action or actions, suit or suits, or other proceedings upon or by virtue of the said several securities, or any of them; and to sue out any execution or executions upon or by virtue of the said judgment, for the recovery of the said annuity or yearly sum of —— pounds; and the present and future arrears, and such proportional part thereof as aforesaid; and all costs, charges, and expenses attending the non-payment or recovery thereof, as he the said [*purchaser*], his executors, administrators, or assigns shall think fit or be advised: And *generally* to make, do, and execute all such further and other acts, deeds, matters and things, and to take and pursue all such other legal or equitable ways, means, course, or expedient for effectuating the premises aforesaid, as fully and effectually as (*l*) he the said [*grantee*], his executors, or
[*377] administra*tors would or might have done if these presents had not been made; *He* the said [*grantee*] hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, shall lawfully do or cause to be done in or about the premises by virtue of these presents. *(Add covenant by purchaser to indemnify vendor from costs in consequence of his name being used in any action,* &c. *ut ante,* p. 361 (*m*).*) (If the sale be made by the*

PERSONS BENEFICIALLY INTERESTED.

(*l*) If by the persons beneficially interested, and executor, &c.

" they the said [*vendors*] and [*executor* or *administrator*], any or either of them, their, any or either of their executors or administrators could or might have done if these presents had not been made; *They* the said [*vendors*], and each and every of them, hereby, &c." *ut supra,* p. 377.

Covenants by executor or administrator, not beneficially interested.

(*m*) If the sale be made by an executor or administrator, who is not beneficially interested in the purchase money, say,

" And the said [*executor* or *administrator*], for himself,

grantee himself, see form of the covenants, ante, p. 362) *(*n*).

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*purchaser*], terested in the purchase money, that he has not incumbered.

(*n*) If the surrender and admission have been made, say,

SURRENDER MADE.

"AND THIS INDENTURE FURTHER WITNESSETH, that in pursuance of the said agreement, and for the considerations aforesaid, (he the said [*grantee*])," Covenant by grantee to surrender to purchaser.

If the surrender and admission have been made, and the grantee be dead, and the persons beneficially interested in the annuity are his specific devisees of the copyhold premises, or his residuary devisees, then they should covenant to surrender; which may be done without another *testatum*, by adding, after "advised and required," above,

"AND LASTLY, that they the said [*vendors*], or their heirs, and all and every other persons and person having any estate or interest therein, under or through the said [*grantee*], or under or through either of them, the said [*vendors*], or either of their heirs, shall and will at the request," &c. *ut infra.* Covenant by devisees of grantor to surrender to purchaser.

But if the copyhold premises have descended to the grantee's heir, he should, after "aforesaid," *supra*, covenant to surrender, thus:

"*And also* for and in consideration of the sum of five shillings of lawful money of Great Britain to him the said [*heir*], well and truly paid by the said [*purchaser*] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*heir*], at the request and by the direction and appointment of the said [*executor* or *administrator*] (or [*vendors*] and [*executor* or *administrator*], testified by his (*or* their severally) sealing and delivering these presents," Covenant by heir of grantor to surrender to purchaser.

"doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*purchaser*], his executors, administrators, and assigns, *That* he the said [*grantee* or *heir*], shall and will, at the request, costs and charges of the said [*purchaser*], his executors, administrators or assigns, surrender into the hands of the lord or lords, lady or ladies of the said manor of —— for the time being, according to the custom of the said manor, *All* and singular the said copyhold premises, mentioned and comprised," &c. *ut supra.*

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

AND the said (*o*) [*grantee*] doth hereby order, di*rect, his executors, administrators, and assigns, that he the said [*executor* or *administrator*] hath not at any time or times heretofore made, done, or committed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof the said annuity or yearly sum of —— pounds, hereby assigned or expressed and intended so to be, or the arrears thereof, or such proportional part thereof as aforesaid, or any of the securities for the same, is, shall, can, or may be impeached, charged, incumbered, released, discharged, determined, affected, or rendered void or voidable: AND that he the said [*executor* or *administrator*], his executors or administrators, shall not nor will at any time or times hereafter revoke or make void any of the powers or authorities hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof as aforesaid; but shall and will permit and suffer his and their name and names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*executor* or *administrator*], his executors and administrators, being indemnified from all loss, costs, charges, damages, and expenses relating thereto, or to be occasioned thereby."

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And not to revoke powers, but to suffer name to be used, being indemnified from costs.

Covenants by executor or administrator solely interested.

And omit the other covenants; but if the executor or administrator be solely interested in the purchase money, the other covenants should be inserted; in which case the covenants for title may immediately succeed without a fresh lien part, thus,

"AND ALSO *That* notwithstanding &c.," *ut post*, p. 382.

If the persons beneficially interested in the purchase money join with

EXECUTOR, &C. ALONE.

(*o*) If the conveyance be made by an executor or administrator alone, substitute,

"[*executor* or *administrator*]"

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &C.

If the conveyance be made by persons beneficially interested, and an executor or administrator, substitute,

"AND all of them the said [*vendors*] and [*executor* or *administrator*] *do*, and each and every of them *doth*," &c.

and appoint the said [*grantor*], or his heirs, forth*with to surrender or cause to be surrendered, *All* and sin-

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

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the executor or administrator, in the assignment, the covenants should be similar to the following:

"And each of them the said [*vendors*] and [*executor* or *administrator*], severally, separate and apart from the other and others of them, doth hereby for himself and herself respectively, and his and her respective heirs, executors and administrators; and as to, for, and concerning only the acts, deeds, and defaults of himself and herself respectively, and his and her respective executors and administrators, covenant, declare, and agree with and to the said [*purchaser*], his executors, administrators, and assigns, in manner following, that is to say; that they the said [*vendors*] and [*executor* or *administrator*], have not at any time or times heretofore made, done, or committed, or knowingly or willingly suffered, or been party or privy to any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof the said annuity or yearly sum of —— pounds, hereby assigned or expressed and intended so to be, or the arrears thereof, or such proportionate part thereof as aforesaid, or any of the securities for the same, is, shall, can or may be impeached, charged, incumbered, released, discharged, determined, affected, or rendered void or voidable: And that they the said [*vendors*] and [*executor* or *administrator*], their executors, or administrators, shall not, nor will at any time or times hereafter revoke or make void the power or authority hereinbefore contained for the recovery of the same annuity, and the arrears thereof, and such proportional part thereof as aforesaid; But shall and will permit and suffer their and his names and name to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; they the said [*vendors*] and [*executor* or *administrator*], their executors and administrators, being indemnified from all loss, costs, charges, damages and expenses relating thereto, or to be occasioned thereby. And the said [*vendor*] doth hereby for himself, his heirs, exe-

Covenants by persons beneficially interested, and executor or administrator, severally, separate and apart.

That they have not incumbered.

And not to revoke power hereby given, being indemnified from costs in consequence of their names being used.

Covenant by person beneficially interested

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR LEGATEE, OR NEXT OF KIN.

gular the said copyhold premises mentioned and com-*prised in the said recited indenture, and every of them, and

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cutors, and administrators, so far as relates to and concerns the one undivided —— part of the said [*wife*], his wife, of and in the said annuity or yearly sum, monies, securities and premises, hereby assigned or otherwise assured, or intended so to be, and as to and concerning only the acts, deeds, title, and defaults of himself and his said wife, and of the said [*grantee*], relating thereto, and so only as to be answerable in damages rateably for and to the value of the same —— part; AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators, so far as relates to and concerns the one undivided —— part of him the said [*vendor*] of and in the said annuity or yearly sum, monies, securities, and premises, hereby assigned or otherwise assured, or intended so to be, and as to and concerning only the acts, deeds, title, and defaults of himself, and of the said [*grantee*] relating thereto, and so only as to be answerable in damages rateably for and to the value of the same —— part; AND THE SAID &c. *(making as many lien parts as there are parties beneficially interested)* covenant, &c." *as below.*

as to his wife's undivided part of annuity, and as to his, her, and grantee's acts, and so as to be answerable only rateably to the value thereof.

Covenant by another as to his part of annuity, and as to his and grantee's acts, and so as to be answerable only rateably to the value thereof.

Covenant by a specific or residuary legatee.

If by a specific or residuary legatee, say,

" AND THE SAID [*vendor*] doth hereby for himself, his heirs, executors, and administrators"

" covenant, promise, and agree with and to the said [*purchaser*], his executors, administrators, and assigns in manner following, that is to say; *That* notwithstanding any act, deed, matter or thing made, done, executed, committed, or knowingly suffered to the contrary by them the said [*vendors*], or by the said [*grantee*], the said annuity or yearly sum of —— pounds, at the time of the sealing and delivery of these presents, is a good and existing annuity for the lives of the said [*nominees*], and the life of the survivor of them: AND all and every the securities for the same are now valid and effectual in the law: AND ALSO that notwithstanding any such act, deed, matter or thing as aforesaid, they the said [*vendors*] and [*executor* or *administrator*] now have, or some or one of them have or hath

Limited to acts of vendors and grantee.

That annuity

and securities are valid.

For title.

every part and parts thereof, with their appurtenances; *To the use* of the said [*purchaser*], his heirs and assigns, ac- ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

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in themselves, himself or herself, good right, full power and lawful and absolute authority to assign and transfer the said annuity or yearly sum, arrears, securities, and other the premises hereby assigned or expressed and intended so to be, and every part and parcel] thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: AND FURTHER, that it shall and may be lawful to and for the said [*purchaser*], his executors, administrators, and assigns, from time to time, to have, receive, take, and enjoy the said annuity or yearly sum, arrears, securities, and premises hereby assigned or expressed, or intended so to be, and every part and parcel thereof, and all the benefit and advantage thereof respectively, to and for his and their own use and benefit, (*subject* as aforesaid), without any let, suit, trouble, molestation, denial, or interruption of, from, or by them the said [*vendor*], or any or either of them, or their, any, or either of their executors or administrators, or by any other person or persons claiming or to claim, by, from, through, under, or in trust for them, any or either of them, or by, from, through, under, or in trust for the said [*grantee*]: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by them the said [*vendors*], their heirs, executors, or administrators, or some or one of them, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, assignments, estates, titles, troubles, charges, and incumbrances whatsoever, made, done, or committed by them the said [*vendors*], or any or either of them, or the said [*grantee*], or by any person or persons claiming by, from, through, under, or in trust for any or either of them: AND MOREOVER, that they the said [*vendors*], and each and every of them, their, each, and every of their executors and administrators, and all and every other person and persons whomso- For quiet enjoyment. Free from incumbrances. And for further assurance.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

cording to the custom of the said manor of ——; *To the intent* that he the said [*purchaser*], his heirs and assigns, may stand seised and possessed of all and singular the same premises, with the appurtenances, *Subject* to the same conditions, *And upon* such and the same trusts, and by, with, under, and subject to the same powers and agreements as in the said recited indenture are mentioned and contained for securing the payment of the said annuity of —— pounds for the benefit of the said [*purchaser*], his executors, administrators, and assigns, instead of the said [*grantee*], his executors and administrators; *But subject* to the like clause of redemption for the benefit of the said [*purchaser*], his heirs and assigns, as in the same indenture is also mentioned and contained: AND the said [*purchaser*] doth hereby for himself, his heirs and assigns, expressly *declare, that he and they shall and will stand

Direction by grantee to grantor to surrender copyhold premises to purchaser.

Use.

Intent.

Conditions.

Trusts.

Declaration of trust by purchaser.

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ever, having or claiming any right, title, or interest of, in, to, or out of the said annuity or yearly sum, arrears, securities, and premises hereby assigned or expressed, and intended so to be, by, from, under, or in trust for them, any or either of them, shall and will, from time to time, and at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, and things, devices, assignments, transfers, and assurances in the law whatsoever, for further and better assigning and assuring the said annuity or yearly sum, arrears, securities, and premises hereby assigned, or expressed and intended so to be, and every of them, and every part and parts thereof respectively, unto the said [*purchaser*], his executors, administrators, and assigns; *and* for further and better enabling and empowering him and them to receive and take the benefit and advantage thereof, to and for his and their absolute use; *As* by him the said [*purchaser*], his executors, administrators or assigns, or his or their counsel learned in the law shall or may be reasonably devised or advised and required."

seised and be possessed of, all and singular the same premises, with the appurtenances, accordingly. And the said (*p*) [*grantee*] doth hereby lastly declare, that the surrender to be made by the said [*grantor*], or his heirs, to the use of the said [*purchaser*], his heirs or assigns as aforesaid, pursuant to the directions hereinbefore for that purpose contained, shall be deemed and taken, in full satisfaction and discharge of the covenant entered into by him the said [*grantor*] with the said [*grantee*] for that purpose, by the said recited indenture as aforesaid. In witness, &c.

ASSIGNMENT BY GRANTEE, EXECUTOR, ADMINISTRATOR, LEGATEE, OR NEXT OF KIN.

Declaration by grantee, that surrender to be made shall be in satisfaction of grantor's covenant.

(*p*) If by executor, &c. say,

" [*executor* or *administrator*] doth, &c." *ut supra.*

EXECUTOR, &C. ALONE.

If by persons beneficially interested, and executor, &c. say,

" [*vendors*] and [*executor* or *administrator*] do, and each and every of them doth hereby, &c." *ut supra.*

PERSONS BENEFICIALLY INTERESTED, AND EXECUTOR, &C.

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ASSIGNMENT OF ANNUITY, &C. CHARGED ON LIFE INTEREST IN STOCK.

ASSIGNMENT *of an* ANNUITY *for the Life of the Grantor, charged on his Life Interest in Dividends of Stock; and* ASSIGNMENT *of the Annuity* BOND, WARRANT *of* ATTORNEY *and* JUDGMENT, *on which Execution has been entered up, and either with or without a* POLICY *of* INSURANCE *on the Grantor's Life; and* ASSIGNMENT *of the Life Interest in the Dividends to a new Trustee, or* DECLARATION *by the old Trustee to stand possessed of the Dividends upon the Trusts of the Grant.*

THIS INDENTURE, made the —— day of ——, in the —— year &c. *George* the *Fourth*, &c., and in the year of our Lord 18—; Between [*grantee*], of &c., of the first part; [*trustee*], of &c., of the second part (*a*);

Parties.

(*a*) *Vide ante*, p. 341.

GRANTOR, A PARTY.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

[*purchaser*], of &c., of the third part; and [*purchaser's trustee*], of &c., of the fourth part. WHEREAS [*grantor*], of &c., by his bond or obligation in writing, under his hand and seal, bearing date on or about the —— day of ——, one thousand eight hundred and ——, became bound unto the said [*grantee*] in the penal sum of —— pounds; *with a condition* thereunder written for making void the same, if the said [*grantor*] should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*] *One* annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on the —— day of ——, and the —— day of ——, in every year, by even and equal portions, the first payment thereof to

Recital of annuity bond.

[*385] *begin and be made on the —— day of —— next ensuing the date of the said bond or obligation; AND *also* if the heirs, executors, or administrators of the said [*grantor*] should well and truly pay unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should depart this life on any day on which any half-yearly payment of the said annuity or yearly sum of —— hundred pounds should become due, the whole of such half-yearly payment; *And* if on any other day, in case such day should happen before any half-yearly payment of the said annuity or yearly sum should have become due, then a proportional part of the half yearly payment of the said annuity or yearly sum of —— hundred pounds, to be computed from the day of the date of the said bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any half-yearly payment of such annuity or yearly sum of —— hundred pounds should have become due at the time of the decease of the said [*grantor*], then, from such of the said half-yearly days of payment of the said annuity or yearly sum of —— hundred pounds, as should be next and immediately preceding the day of the death of the said [*grantor*] to the day of his decease. (AND WHEREAS the said [*grantor*], for better securing the payment of the said annuity or yearly sum of —— hundred pounds, did, by a writing under his hand and seal, bearing even date with the said recited bond or obligation, authorize certain attornies therein named, by confession or

Recital of warrant of attorney,

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

otherwise, to suffer judgment to be entered up against him in his Majesty's Court of (King's Bench, at Westminster,) in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of —— hundred pounds, and costs of suit; AND judgment was accordingly, on or about the —— day of ——, entered up against the said [*grantor*], as of —— term in the —— year of the reign of King George the (Third).) AND WHEREAS by indenture, bearing even date with the said recited bond or obligation, and made between the said [*grantor*], of the first part; the said [*grantee*], of the second part; and the said [*trustee*], of the third part; *After reciting* that by an indenture, bearing date on or about the —— *day of ——, one thousand seven hundred and ——, and made between the said [*grantor*], of the first part; [*lady's father*], of the second part; [*lady*], of the third part; and [*trustees*], of the fourth part; the said [*trustees*], their executors, administrators, and assigns, were directed by and out of the interest and dividends, from time to time arising and to arise upon or from —— pounds, Three pounds *per centum* Consolidated Annuities then standing in their names, or upon or from the stocks, funds, and securities for the same, yearly and every year, during the joint lives of the said [*grantor*], and [*lady*], to pay the yearly sum of —— pounds of lawful money of Great Britain, by half-yearly payments, as therein mentioned, unto the said [*lady*], for her sole and separate use and benefit; *And* from time to time to pay the residue and surplus of the said interest and dividends, over and above what should be sufficient from time to time to pay and satisfy the said yearly sum of —— pounds, in manner therein mentioned, and all costs and charges attending the execution of the trusts thereby declared, unto the said [*grantor*] or his assigns, to and for his and their own use and benefit, for and during the joint lives of him the said [*grantor*], and the said [*lady*]; *And* if the said [*grantor*] should survive the said [*lady*], then, from and after her decease, to pay unto, or authorize or permit the said [*grantor*], or his assigns, to receive and take the whole of such interest and dividends to and for his and their own use and benefit, for and during the term of his natural life; *It is witnessed*, that in consideration of the sum of —— pounds, to the said [*grantor*] paid by the said [*grantee*] in manner therein

and judgment.

Recital of grant of annuity.

Reference to settlement, whereby grantor becomes entitled to dividends for his life.

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ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

mentioned, the said [*grantor*] did give, grant, bargain, sell, and confirm unto the said [*grantee*], his executors, administrators, and assigns, for and during the term of the natural life of the said [*grantor*], *One* annuity or clear yearly sum of —— pounds of lawful money of Great Britain, to be charged and chargeable upon, and to be issuing, payable, had, received, and taken by and out of the interest and dividends of the said —— pounds, Three pounds *per centum* Consolidated Annuities, *To have*, hold, receive, take, and enjoy the same annuity or clear yearly sum [*387] unto the said [*grantee*], *his executors, administrators, and assigns, thenceforth for and during the natural life of the said [*grantor*], to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, half-yearly, free from taxes, charges, rates, assessments, or other impositions whatsoever, upon the days and times, and in the manner mentioned and expressed in the condition of the said in part recited bond or obligation: AND it is by the said indenture now in recital further witnessed, that for better securing the due and punctual payment of the said annuity or yearly sum of —— pounds unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*], he, the said [*grantor*], did bargain, sell, assign, transfer, and set over, unto the said [*trustee*], his executors, administrators, and assigns, *All* the interest, dividends, and annual produce of the said —— pounds, Three pounds *per centum* Consolidated Annuities, to which he the said [*grantor*], was entitled for his life, under and by virtue of the said indenture of settlement as aforesaid, *To have*, hold, receive, take, and enjoy the same unto the said [*trustee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*], *Upon* the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements therein mentioned, expressed, and declared of and concerning the same, that is to say, *Upon trust* to receive the same, and thereout to pay unto the said [*grantee*], his executors, administrators, and assigns, the said annuity or yearly sum of —— pounds, mentioned and intended to be thereby granted as aforesaid, during the natural life of the said [*grantor*], and all arrears thereof, and all costs,

Recital of assignment of dividends to a trustee.

charges, and expenses (if any) which they the said [*grantee*] and [*trustee*], or either of them, their or either of their executors, administrators or assigns, should pay, sustain, expend, or be put unto for or by reason or means of the non-payment of the said annuity or clear yearly sum of —— pounds, or any part thereof, at or on the days and times, and in the manner thereinbefore expressed or appointed for the payment of the same, or the performance of the trusts thereby created, expressed, or declared; AND *to pay the residue of the said interest and dividends unto the said [*grantor*], his executors, administrators, and assigns, or as he or they should direct and apppoint: AND the said [*grantor*] thereby made, ordained, constituted, and appointed the said [*trustee*], his executors, administrators, and assigns, and every of them, his attorney and attornies, to ask, demand, sue for, recover, and receive, the said interest and dividends, or any part thereof. AND in the said in part recited indenture there is contained a proviso enabling the said [*grantor*] to repurchase the said annuity or clear yearly sum of —— pounds, upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days' notice of his intention, and paying the sum of [*original purchase money*], and one half-yearly payment of the said annuity, with all arrears which should be then due, and a proportional part thereof, up to and until repurchasing the same. AND WHEREAS the said [*purchaser*] hath contracted and agreed with the said [*vendor*] for the absolute purchase of the said annuity or clear yearly sum of —— pounds, for the life of the said [*grantor*], at or for the price or sum of —— pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of —— pounds of lawful money of Great Britain, to the said [*grantee*] well and truly paid by the said [*purchaser*], at or before the sealing and delivery of these presents, the receipt whereof he the said [*grantee*] doth hereby acknowledge, and of and from the same sum and every part thereof doth hereby acquit, release, and for ever discharge the said [*purchaser*], his executors, and administrators, *He* the said [*grantee*](*b*), *hath* bargained, sold, assigned,

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

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Recital of power of attorney.

Recital of power of repurchase.

Recital of contract for purchase.

Testatum.

Assignment of

(*b*) *Vide ante*, p. 342, (*b*).

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*purchaser*], his executors, administrators, and assigns, ALL THAT the said annuity or clear yearly sum of —— pounds, in and by the said in part recited bond or obligation, judgment and indenture, secured, granted, and made payable unto the said [*grantee*], his executors, administrators, and assigns, as hereinbefore mentioned; *And* all *arrears now due thereon; *Together* with the said bond or obligation, warrant of attorney, judgment, and indenture (*c*); *And* all and every sums and sum of money thereby respectively secured or thereupon recoverable; *And* all the benefit and advantage thereof respectively, and also of the grant and covenants contained in the same indenture: AND all the right, title, interest, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the same annuity or clear yearly sum (*d*), monies, securities, and premises, and every or any part thereof respectively. TO HAVE, hold receive, take, and enjoy the said annuity or clear yearly sum of —— pounds (*d*), monies, securities, and premises, hereby assigned or otherwise assured, or intended so to be, unto the said [*purchaser*], his executors, administrators, and assigns, (henceforth *or*) from the —— day of —— last past, for and during the natural life of the said

annuity,

arrears, bond,

warrant of attorney, judgment, and indenture.

All monies, &c.

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All the right.

Habendum of annuity.

(*c*) If the grantee has effected a policy of insurance on the lives of the nominees, and there is no covenant in the annuity deed respecting insurance, it may be assigned in the following manner, without any previous recital:

ASSIGNMENT OF INSURANCE ON A LIFE OR LIVES. Reference to policy.

"*And also*, ALL THAT policy of insurance, bearing date on or about the —— day of ——, 18—, and numbered ——, given, granted, or issued by the (Globe) Life Insurance Office, whereby, for the annual premium of —— pounds, the sum of —— pounds, is insured to be paid to the said [*grantee*], his executors, administrators, and assigns, upon the decease of the said [*grantor*], (*or* upon the decease of the survivor of them the said [*nominees*];)"

POLICY OF INSURANCE.

(*d*) If there be a policy of insurauce, say,

"policy of insurance,"

[*grantor*]; *Subject nevertheless* to the proviso contained in the said in part recited indenture, enabling the said [*grantor*] to re-purchase the said annuity or clear yearly sum, in the manner and on the terms therein mentioned. AND for the considerations aforesaid, *he* the said [*grantee*], *Doth* hereby make, nominate, constitute,*and appoint the said [*purchaser*], his executors, administrators, and assigns, his true and lawful attorney and attornies, irrevocably, in the name of him the said [*grantee*], his executors or administrators, or in the name or names of the said [*purchaser*], his executors, administrators, or assigns, but in either case for the sole use and benefit of the said [*purchaser*], his executors, administrators, and assigns, to ask, demand, sue for, recover, and receive, the said annuity or clear yearly sum of —— pounds, and the arrears and future payments thereof (*e*), and all and every or any other sum or sums of money due, or to become due, under the said in part recited securities, or any of them, and every or any part or parts thereof respectively, of and from the person or persons liable to pay the same respectively; *And* in default of the payment thereof, or of any part thereof respectively, to bring, commence, sue forth, and prosecute, any action or actions, suit or suits, upon or by virtue of the said several securities, or any of them, and to sue out any execution or executions, upon or by virtue of the said judgment, for recovering the said annuity or clear yearly sum of —— pounds, monies, and premises hereby assigned or otherwise assured, or intended so to be, or any part or parts thereof, and all costs, charges, and expenses attending the non-payment or recovery thereof; or to use such other ways and means for compelling or enforcing the payment of the same respectively, as to the said [*purchaser*], his executors, administrators, or assigns, shall seem meet; *And* upon the receipt of the said annuity or clear yearly sum of —— pounds, and monies hereby assigned or otherwise assured, or intended so to be, or any part or parts thereof respectively, to sign, seal, de-

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Subject to re-purchase.

Power of attorney to receive and recover annuity.

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(*e*) If there be a policy of insurance, say, "and the monies to become due on the said policy of insurance."

POLICY OF INSURANCE.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

liver, and give, one or more receipt or receipts, acquittance or acquittances, or other discharge or discharges for the same: *And also* upon the repurchase of the said annuity or clear yearly sum of —— pounds, or upon any other occasion, to release the said judgment, or to enter satisfaction for the same upon the record thereof; *Or* to do
[*391] any other acts or things for avoiding or *releasing the said annuity or clear yearly sum of —— pounds, and all or any of the securities hereby assigned or otherwise assured, or intended so to be: *And* for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies, as a substitute or substitutes for him the said [*purchaser*], his executors, administrators or assigns; and such nomination and appointment at his and their pleasure to revoke: *And generally* to do and perform all such other acts, deeds, matters, and things, in and about the premises, as fully and effectually, to all intents and purposes, as he the said [*grantee*], his executors or administrators, might or could do if personally present and acting therein; *He* the said [*grantee*] hereby ratifying and confirming, and agreeing to ratify and confirm, all and whatsoever the said [*purchaser*], his executors, administrators, or assigns, or his or their substitute or substitutes, shall lawfully do or cause to be done in or about the premises, by virtue of these presents. AND THE SAID [*purchaser*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*grantee*], his executors, and administrators, *That* he the said [*purchaser*], his heirs, executors, administrators, or assigns, shall and will, from time to time, and at all times hereafter, pay unto, and in the mean time save harmless, and keep indemnified the said [*grantee*], his executors, and administrators, of, from, and against all costs, charges, and expenses, which he or they shall or may be put unto, bear, pay, or sustain, for or by reason, or on account of the name or names of the said [*grantee*], his executors or administrators, being used in any action, suit, or other proceeding, which may be brought, commenced, or prosecuted by virtue of any power or authority hereby given, or in pursuance hereof to be given to the said [*purchaser*], his executors, administrators, or assigns;

Covenant by purchaser to indemnify vendor from costs, &c. in consequence of his name being used.

so as the same do not arise or accrue through the collusion or act of the said [*grantee*], his executors or administrators. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns, that notwithstanding any act, deed, matter, or thing whatsoever, had, made, done, committed, permit-*ted, or suffered to the contrary by the said [*grantee*], the said recited annuity or clear yearly sum of —— pounds is a good, valid, and subsisting annuity: AND that the same or any part thereof has not been released, extinguished, or determined: AND that notwithstanding any such act, deed, matter, or thing as aforesaid, he the said [*grantee*] now hath in himself, good right, full power, and lawful and absolute authority by these presents to bargain, sell, assign, and set over, or otherwise assure the said annuity or clear yearly sum of —— pounds, bond, warrant of attorney, judgment (*f*), and covenant, monies, and premises, respectively, hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, with the appurtenances, unto the said [*purchaser*], his executors, administrators, and assigns, according to the true intent and meaning of these presents: AND that he the said [*grantee*], his executors, or administrators, shall not, nor will at any time hereafter, without the consent in writing of the said [*purchaser*], his executors, administrators, or assigns, or the order or decree of some court of law or equity, alter, revoke, or annul any of the powers or authorities hereinbefore given to the said [*purchaser*], his executors, administrators, and assigns, for receiving and recovering the said annuity or clear yearly sum, monies, and premises hereby assigned, or otherwise assured, or intended so to be; but shall and will permit and suffer his and their name or names to be made use of in any action, suit, or other proceeding to be brought, commenced, instituted, or carried on for that purpose; he the said [*grantee*], his executors, and administrators, being in-

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Covenant by vendor, that annuity is subsisting,

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and not released.

For title.

Not to revoke powers, but suffer name to be used, being indemnified from costs.

(*f*) If there be a policy of insurance, say,

POLICY OF INSURANCE.

" policy of insurance,"

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

demnified as aforesaid, from all loss, costs, charges, damages, and expenses, relating thereto, or to be occasioned thereby: AND FURTHER, that henceforth, and from time to time, and at all times hereafter, during the life of the said [*grantor*], or till the said annuity or clear yearly sum of —— pounds shall be repurchased, it shall or may be lawful to and for the said [*parchaser*], his executors, administra-

For peaceable enjoyment.

[*393] *tors, and assigns, to have, hold, and enjoy the said annuity or clear yearly sum of —— pounds, and to receive and take the benefit thereof, and of the said securities for the same (*g*), in manner and form aforesaid, according to the true intent and meaning of these presents, without any let, suit, trouble, interruption, hindrance, or denial whatsoever, of, from, or by the said [*grantee*], his executors or

Free from incumbrances.

administrators: AND free and clear, and freely, clearly, and absolutely acquitted, exonerated, released, and discharged, or otherwise by him the said [*grantee*], his heirs, executors, or administrators, at his or their own costs and charges, in all things well and sufficiently protected, defended, saved harmless, and kept indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, assignments, releases, titles, troubles, liens, charges, and incumbrances whatsoever, at any time or times heretofore, and to be at any time and from time to time hereafter made, done, committed, executed, or suffered by the said [*grantee*], his

For further assurance.

executors or administrators: AND LASTLY, that he the said [*grantee*], his executors, and administrators, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges in the law of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for further, better, and more effectually or satisfactorily, assigning, or otherwise assuring, the said annuity or

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POLICY OF INSURANCE.

(*g*) If there be a policy of insurance, say,

" and also the benefit of the said policy of insurance,"

clear yearly sum of —— pounds, bond, warrant of attorney, judgment (*h*), and covenant, monies, and premises, hereby assigned or otherwise assured, or intended so to be, and every part and parcel of the same, unto the said [*purchaser*], his executors, adminis*trators, and assigns, and also for authorizing and empowering him and them to receive and derive the full benefit of the said annuity or clear yearly sum, bond, warrant of attorney, judgment (*h*), and covenant, according to the true intent and meaning of these presents; *As* by the said [*purchaser*], his executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably advised or devised and required; [*So* as such further assurances, or any of them, shall not contain in them or imply any further or other covenant or warranty, on the part of the person or persons who shall be requested to make and execute the same, than for himself, herself, and themselves respectively, and the acts, deeds, and defaults of himself, herself, and themselves respectively, and his, her, and their respective executors and administrators; *And* so as the person or persons, who shall be requested to do such acts, or make such further assurances, shall not be compelled or compellable for the purpose of making or doing the same, to go or travel from his, her, or their then dwelling or place of abode, or respective dwellings or places of abode.] AND THIS INDENTURE FURTHER WITNESSETH (*i*), that for the considerations

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

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Further testatum.

(*h*) If there be a policy of insurance, say,

POLICY OF INSURANCE.

" policy of insurance,"

(*i*) If the old trustee be continued, add,

OLD TRUSTEE CONTINUED.

" *And it is hereby declared and agreed,* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*grantee*], testified by his sealing and delivering these presents, doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*purchaser*], his executors, administrators, and assigns,] That he the said [*trustee*], his executors, administrators, and assigns, shall and will from time to

Declaration of trust.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

afore*said, and for and in consideration of the sum of ten shillings of lawful money of Great Britain, to the said [*old trustee*] paid by the said [*new trustee*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*old trustee*], at the request and by the direction of the said [*grantee*], and upon the nomination and appointment of the said [*purchaser*] testified by their severally sealing and delivering these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents doth bargain, sell, assign, transfer, and set over, unto the said [*new trustee*], his executors, administrators, and assigns, ALL THOSE the said dividends and interest of the said —— pounds, Three pounds *per centum* Consolidated Annuities, which in and by the hereinbefore in part recited indenture were assigned by the said [*grantor*] to the said [*old trustee*], his executors, administrators, and assigns: AND all the right, title, interest, property, claim, and demand whatsoever, of him the said [*old trustee*], of, in, to, or out of the same. To HAVE, hold, receive, take, and enjoy the said interest and dividends of the said —— pounds, Three pounds *per centum* Consolidated Annuities, unto the said [*new trustee*], his executors, administrators, and assigns, for and during the natural life of the said [*grantor*]; UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, mentioned, expressed, and declared of and concerning the same, in and by the said in part recited indenture of the —— day of ——, one thousand eight hundred and ——; *But so nevertheless*, that all the benefit and advantage of the same trusts, by the same indenture declared or intended in favour of the said [*grantee*], his executors, administrators, and assigns, shall belong to, and be received and enjoyed by the said [*purchaser*], his executors,

Assignment by old trustee by the direction and appointment of vendor and purchaser to new trustee, of

dividends.

All the right.

Habendum of dividends.

Upon trusts mentioned in grant.

But trusts for vendor to be for purchaser's benefit.

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time, and at all times hereafter, during the life of the said [*grantor*], stand possessed of and interested in the said interest and dividends, UPON THE TRUSTS, &c. *ut supra*, p. 395. ADD *covenant from the trustee to the purchaser, that he has not incumbered, ut post*, p. 395.

Covenant by old trustee that he has not incumbered.

administrators, and assigns. And the said [*old trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said [*new trustee*], his executors, administrators, and assigns, that he the said [*old trustee*] hath not at any time heretofore made, done, executed, *committed, or knowingly or willingly suffered any act, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said interest and dividends ((*k*) hereby assigned, or otherwise assured, or intended so to be,) or any part thereof, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. In witness, &c.

ASSIGNMENT OF ANNUITY, &c. CHARGED ON LIFE INTEREST IN STOCK.

Covenant by the old trustee that he has not incumbered.

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(*k*) If the old trustee be continued, omit the part in parentheses.

OLD TRUSTEE CONTINUED.

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ASSIGNMENT, *with the Consent of the Grantee's Administratrix* de bonis non *and her Husband, of a* Tontine Annuity, *for the Life of the Vendor's Wife, payable by Trustees out of an Estate in* Ireland, *with* Benefit *of* Survivorship.

ASSIGNMENT OF TONTINE ANNUITY.

This indenture, made the —— day of ——, in the year of our Lord 18—; Between [*vendor*], of &c., and [*wife*] his wife, (late [——], spinster), of the first part; [*husband of administratrix*], of &c., and [*administratrix de bonis non*], his wife (late [——], spinster), which said [*administratrix*] is administratrix of the goods and chattels of [*grantee*], late of —— in the county of ——, [*description*] deceased, left unadministered by [*widow*] his widow, and is also executrix of the will of the said [*widow*], of the second part; and [*purchaser*], of &c., of the third part. Whereas, by indentures of lease (*a*) and release, bearing

Parties.

Description of administratrix.

Recital of creation of tontine

(*a*) A lease or bargain and sale for a year, as a preliminary to a release of lands in Ireland, is sometimes prepared through inadvertence; but it

Lease for year unnecessary for lands in Ireland.

ASSIGNMENT OF TONTINE ANNUITY.

annuities, charged on lands in Ireland.

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date respectively the —— *and —— days of ——, 17—, the release being [of three parts and] made between [*grantor*], of ——, in the county of ——, in Ireland, esquire, of the first part; [*trustees*], of the second part; and the several other persons whose names are thereunder written as subscribers to the tontine thereinafter mentioned, of the third part. *Certain* tontine annuities or yearly sums, increasing by survivorship, were thereby secured to the said [*trustees*], their heirs, and assigns, *In trust* for the several persons parties thereto of the third part; AND were thereby charged on and made issuing and payable out of the rents and profits of certain freehold estates of him the said [*grantor*], in the said county of ——. AND WHEREAS, by two several certificates or debentures numbered —— and ——, under the hands of the said trustees of the said tontine, bearing date respectively the —— day of ——, 17—, they the said trustees did certify and declare that the said [*grantee*] had subscribed two shares in the first class of the said tontine, and had named his daughter the said [*wife of vendor*] (then [*maiden name*]) and [*other nominee*], son of ——, of —— aforesaid, his nominees; *And* the said trustees did therefore by the said debentures

Recital of debentures, whereby grantee became entitled to two annuities with benefit of survivorship.

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is unnecessary, because, by the Irish statute 9 Geo. 2, c. 5, s. 6, intitled "*An act for the more effectual assigning of judgments, and for the more speedy recovery of rents by distress,*" 6th vol. Irish Statutes, 192, after reciting, "*Whereas* it has frequently happened, that purchasers for valuable considerations under deeds of lease and release have been prevented from recovering their rights, for want of being able to produce the lease for a year, which is often lost or mislaid;" IT IS ENACTED "That in all cases the recital of a lease for a year in the deed of release shall be deemed and taken to be full and sufficient evidence of such lease."

By the 7th section, the act was to continue in force until the first day of May, 1740. And by the Irish tatute 1 Geo. 3, c. 3, 7th vol. Irish Statutes, 808, it is made perpetual.

In pleading lease and release in Ireland, sufficient to allege bringing release into Court.

By the 2d section of the latter act, IT IS ENACTED, "That in all cases of pleading deeds of lease and release, wherein it may be necessary to allege the bringing such deeds into court, it shall be sufficient to allege the bringing into court the deed of release, in which the recital of such lease shall, to all purposes whatsoever, be as effectual as producing the same."

ASSIGNMENT OF TONTINE ANNUITY.

further certify that the said [*grantee*], his executors, administrators, and assigns, should, in pursuance of the said indenture, receive two several annuities of —— pounds, —— shillings, by half-yearly payments, with such additional interest from time to time as should accrue by survivorship in the first class of nominees of the said tontine; *One* of such annuities to be payable during the life of the said [*vendor's wife*], (then [*maiden name*]); *And* the other for the life of the said [*other nominee*]. AND WHEREAS the said [*grantee*] *departed this life in the month of ——, 17—, intestate, leaving his widow, the said [*widow*], and two children, namely the said [*vendor's wife*] and [*administratrix*] him surviving: AND on the —— day of ——, 17—, the said [*widow*], the widow, obtained letters of administration of the goods and chattels of the said [*grantee*], to be granted to her by the Prerogative Court of the Archbishop of Canterbury; AND the said [*widow*], in her life-time, parted with her interest in the said two debentures, by delivering them to the said [*wife of vendor*] and *administratrix*], previously to their intermarriages respectively, no assignment thereof being deemed necessary, the same debentures being respectively payable to the bearer thereof. AND WHEREAS, ever since such delivery of the said debentures by the said [*widow*], it was understood and agreed between the said [*vendor*] and [*wife*] his wife, and [*husband of administratrix*] and [*wife*] his wife, that the said annuity payable for the life of the said [*vendor's wife*], should be held and received by her as the separate property of the said [*vendor*] and [*wife*] his wife, and that the said annuity payable for the life of the said [*other nominee*], should be considered and taken as the separate property of the said [*husband of administratrix*] and [*wife*] his wife; and they have ever since received such respective annuities independently of each other, and as their separate and distinct property; but no assignment was ever executed by the said parties for carrying such arrangement into effect. AND WHEREAS the said [*widow*] is dead, having by her will appointed the said [*administratrix*] executrix, who hath since proved the said will in the Prerogative Court of Canterbury. AND WHEREAS the said

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Recital of grantee's death intestate,

and grant of administration to his widow,

who delivered debentures as a gift to her two daughters, jointly,

who agreed to hold them in severalty;

but no assignment was made.

Recital of widow's death, and proof of her will by daughter.

Recital of administration to

ASSIGNMENT OF TONTINE ANNUITY.

grantee *de bonis non*, granted to daughter.

[*administratrix*] did also, on the —— day of ——, 18—, obtain letters of administration of the goods and chattels of the said [*grantee*], left unadministered by the said [*widow*], to be granted to her by the said Prerogative Court of Canterbury (*b*). AND WHEREAS the said [*vendor*] and [*wife*]

The executor of an executor, *ad infinitum*, represents the first testator.

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(*b*) The interest vested in an executor by the will of the deceased may be continued and kept alive by the wills of the successive executors: so that the executor of A.'s executor, in however remote a series, is, to all intents and purposes, the executor and representative of A. him*self; and has the same interest in the goods and chattels of A., as the first and immediate executor. *Hudson* v. *Hudson*, 1 Atk. 461; 2 Bla. Com. 506; Toll. Ex. 243; Noy's Maxims, 103, 5th ed.; 231, 9th ed.; 3 Bac. Abr. 19, *Executors* (B), 2. 1. pl. 2. But this is to be understood, when the executor proves the will; Palm. 156; Com. Dig. *Administration*, (G); for, if the first or any other executor die after administering, and before probate, his executor cannot prove the will of the testator; because he is not named executor to him in the will; no person being competent to prove a will but he who is named executor in the will; *Wankford* v. *Wankford*, 1 Salk. 309; and administration of the goods of the testator must be granted *cum testamento annexo* to the executor of the executor, if the residue of the goods of the testator were bequeathed by his will to the executor; or otherwise to the residuary legatee, if any; or to the next of kin of the testator. 1 Roll. Abr. 907, pl. 10; *Isted* v. *Stanley*, Dyer, 372 a, (8); *Day* v. *Chapfield*, 1 Vern. 200; 11 Vin. Abr. 67, pl. 10, 20, 27; Godolphin's Orphan's Legacy, Pt. 2, Ch. 30, p. 230, 4th ed.

But an executor of an executor cannot prove the will of the first testator.

Administration with the will annexed.

Executor of administrator, &c.

But the executor of A.'s administrator, or the administrator of A.'s executor, is not the representative of A.; Bro. Abr. *Administratours, &c.* pl. 7, page 16 a, ed. 1573†; because the power of an executor is founded upon the special confidence and actual appointment of the deceased; and such executor is therefore allowed to transmit that power to another, in whom he has equal confidence; but the administrator of A. is merely the officer or deputy of the ordinary, prescribed to him by act of Parliament, (31 Edw. 3, stat. 1, c. 11) in whom the deceased has reposed no trust at all: and therefore, on the death of that officer or deputy, it results back to the ordinary to appoint another. And with regard to the administrator of A.'s executor, he has clearly no privity or relation to A.; being only commissioned to administer the effects of the intestate executor, and not of the original testator. Therefore, in both these cases, and whenever the course of representation from executor to executor is interrupted by any one

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† This is the best edition of *Brooke;* and there are not so many abbreviations of the words as in the other editions.

ASSIGNMENT OF TONTINE ANNUITY.

his wife have contracted and agreed with the said [*purchaser*], for the sale to him of the said tontine annuity, payable during the life of the said [*vendor's wife*], and of all arrears, and all future payments to accrue due in respect thereof, at or for the price or sum of —— pounds: AND in order legally to assign the same, the said [*husband of administratrix*], and [*wife*] his wife, have agreed to join in the assignment thereof, in manner hereinafter mentioned. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of —— pounds of lawful money of Great Britain and Ireland to the said [*vendor*] and [*wife*] his wife, with the consent of the said [*husband of administratrix*] and [*wife*] his wife, in hand paid by the said [*purchaser*], at the execution of these presents, the receipt whereof is hereby acknowledged; *And also* for and in consideration of the sum of ten shillings to the said [*husband of administratrix*] and [*wife*] his wife in hand at the same time paid by the said [*purchaser*], the receipt whereof is hereby acknowledged, *They* the said [*vendor*], and [*wife*] his wife, with the consent of the said [*husband of administratrix*], and [*wife*] his wife, *have*, and each of them *hath* granted, bargained, sold, assigned, transferred, and set over; *And* by these presents *do*, and each of them *doth* grant, bargain, sell, assign, transfer, and set over; *And* the said [*husband*] as the husband of the said [*administratrix*], *And* the said [*administratrix*], as executrix of the will of the said [*widow*], and also as administratrix *de bonis non*, and legal representative of the said [*grantee*], deceased as aforesaid, *And also* so far as respects their own individual rights and interest, at the instance and request,

Recital of contract for sale.

And agreement of administratrix and her husband to join in assignment.

Testatum.

Vendor and wife,

and administratrix and husband, assign

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administration, it is necessary for the ordinary to commit administration afresh, *of the goods* of the deceased *not* administered by the former executor or administrator. And this administrator *de bonis non* is the only legal representative of the deceased in matters of personal property. *Ley* v. *Anderton*, Styl. 225. But he may, as well as an original administrator, have only a *limited* or *special* administration committed to his care, *viz.* of certain specific effects, such as a term of years, and the like; the rest being committed to others. 1 Roll. Abr. 908, (D) pl. 1; *Fawtry* v. *Fawtry*, 1 Salk. 36, pl. 2; 2 Bla. Com. 506. [As to limited administrations, *vide post*, Vol. 5, p. 201.]

Limited administration.

ASSIGNMENT OF TONTINE ANNUITY.

and by and with the privity, consent, and direction, of the said [*vendor*] and [*wife*] his wife, testified by their severally being parties to and executing these presents, *have*, and each of them *hath* bargained, sold, assigned, ratified, and confirmed; *And* by these presents *do*, and each of them *doth* bargain, sell, assign, ratify, and confirm unto the said [*purchaser*], his executors, administrators, and assigns, THE said annuity in the first class of the said tontine called "——'s tontine," by the said recited certificate or debenture, numbered ——,*certified to be payable to the said [*grantee*], his executors, administrators, and assigns, for the life of the said [*vendor's wife*], then [*maiden name*] as aforesaid, with all arrears due thereon, and all such additional interest as shall from time to time accrue by survivorship; together with the said certificate or debenture: AND all the right, interest, benefit, claim, and demand whatsoever of them the said [*vendor*], and [*wife*] his wife, [*husband of administratrix*] and [*wife*] his wife, in their several and respective capacities aforesaid, of, in, to, or out of the said annuity, debenture, and premises, and every part thereof; *Together* with all usual or necessary powers and remedies, in their respective names, for recovering and receiving the same. TO HAVE, hold, receive, and take the said annuity, debenture, and premises hereby assigned, with such benefit of increase by survivorship as aforesaid, unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit. AND THE SAID [*vendor*], for himself, his heirs, executors, and administrators, and for the said [*wife*] his wife; AND THE SAID [*husband of administratrix*], for himself, his heirs, executors, and administrators, and for the said [*wife*] his wife, *do* hereby covenant and declare to and with the said [*purchaser*], his executors, administrators, and assigns, in manner following, that is to say; that they the said [*vendor*] and [*wife*] his wife, and [*husband of administratrix*] and [*wife*] his wife, have not made, done, or committed any act, deed, matter, or thing whatsoever, whereby or by means whereof the said annuity, debenture, and premises hereby assigned, or any part thereof, are, is, can, shall, or may be impeached, charged, assigned, or incumbered in any manner howsoe-

tontine annuity.

[*402]

With accruer.

All the right, &c.

All powers, &c.

Habendum.

Covenant by vendor for himself and wife.

Covenant by husband of administratrix for himself and wife.

That they have not incumbered.

ASSIGNMENT OF TONTINE ANNUITY.

ver: AND FURTHER, that they the said [*vendor*] and [*wife*] his wife shall and will at any time or times hereafter, upon the reasonable request, costs, and charges of the said [*purchaser*], his executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other acts, deeds, assignments, powers, and authorities in the law as shall be requisite for the better and more effectually assigning the said annuity, debenture, and premises unto the said [*purchaser*], his executors, administrators, and assigns, and enabling him and them to receive and recover the same: AND LASTLY, the said [*vendor*], for himself, his heirs, executors, and administrators, doth hereby further covenant with the said [*purchaser*], his executors, administrators, and assigns, that he the said [*purchaser*], his executors, administrators, and assigns, shall receive the said tontine annuity, without any let, suit, trouble, hindrance, or interruption, by any person or persons whomsoever: AND ALSO, that he the said [*vendor*], his executors or administrators, shall and will, on the (tenth) day of (October) and the (tenth) day of (April) in every year during the life of the said [*wife*], procure proper certificates, to be signed by the minister or churchwardens of the parish in which the said [*wife*] shall be residing, of her being alive; and transmit such certificates, from time to time, to the said [*purchaser*], his executors, administrators, and assigns; and shall and will do all other acts requisite and necessary to enable him and them to receive the said annuity. IN WITNESS, &c.

Covenant by vendor for himself and wife for further assurance.

[*403]

General covenant by vendor for peaceable enjoyment.

And to transmit certificates of his wife being alive.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

ASSIGNMENT *by the Grantee, Upon the Trusts of a Settlement of even Date, previously to the intended Marriage of his Daughter, of an* ANNUITY, *charged on Lands for the Life of the Grantor, and secured by a* DEMISE *to a Trustee, for the Benefit of the Grantee and two other Annuitants, and a* JUDGMENT *confessed, with a* COVENANT *by the Grantor to appear at any* INSURANCE *Office, and to give Notice and pay additional Premiums on going abroad: either with or without a* DECLARATION, *that the Trustee of the Term shall stand possessed of the Premises, Upon Trust to secure the Annuity to the Trustees, Upon the Trusts hereby declared: and* COVENANT *by one of the other Annuitants to produce the Deed creating the Annuity.*

COVENANT TO PRODUCE ANNUITY DEED.

THIS INDENTURE, made the —— day of ——, in the year of our Lord, 18—; BETWEEN [*grantee*], of &c., of the first part; [*intended husband*], of &c., of the second part; [*intended wife*], of &c., (the eldest daughter of the said [*grantee*]), of the third part; [*depositary of deed*], of &c., of the fourth part; [*trustee*], of &c., and [*other trustee*], of &c., of the fifth part(*a*). WHEREAS, by an indenture bearing date on or about the —— day of

Parties.

Recital of grant of annuity.

Advantages of this mode.

(*a*) By assigning an annuity upon the trusts of a settlement in this manner, with clauses enabling the trustees to give effectual receipts, the trusts of the settlement are not made known to the grantor or to a purchaser, &c.

Grantor and trustee should be parties, or have notice of assignment.

In a similar assignment to the present, the grantor and the trustee of the term should either be parties to or have notice of the deed. *Vide ante*, p. 341, *post*, p. 411.

——, 18—, and made, or expressed to be made, between [*grantor*], of the first part; the said [*depositary*], of the second part; the said [*grantee*], of the third part; [*another annuitant*], of the fourth part; and [*trustee of term*], of the fifth part; In consideration of the sum of —— thousand pounds paid by ([*agent*], of &c., as agent for) the said [*grantee*] to the said [*grantor*] as therein mentioned, the said [*grantor*] did give, grant, and confirm unto the said [*grantee*], his executors, administrators, and assigns, *One* clear annual sum or yearly rent-charge of —— hundred and —— pounds, for the natural life of the said [*grantor*]; *To* be issuing and payable out of all the manors or lordships, capital and other messuages, farms, lands, tenements, cottages, and hereditaments thereinafter mentioned to be thereby demised, and every part thereof; and to be paid by four equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, without any deduction whatsoever (the tax or duty on income or property only excepted); and a proportional part of the said annual sum or yearly rent-charge of —— hundred and —— pounds, up to the day of the decease of the said [*grantor*]: *And* by the said indenture now in recital, the said [*grantor*] did grant unto the said [*grantee*], his executors, administrators, and assigns, the usual powers and remedies of distress and entry, and detention of possession, and perception of rents and profits, in case the said annual sum or yearly rent-charge of —— hundred and —— pounds, or any part thereof, should be in arrear: *And* by the said indenture now in recital, the said [*grantor*] did covenant with the said [*grantee*], his executors, administrators, and assigns, for the regular payment of the said annual sum or yearly rent-charge of —— hundred and —— pounds: And by the said indenture now in recital, the said [*grantor*], for the considerations aforesaid, and for the nominal consideration therein mentioned, did grant, bargain, sell, and demise unto the said [*trustee*], his executors, administrators, and assigns, *The* manors or lordships, capital and other messuages, farms, lands, tenements, *cottages, and hereditaments therein particularly mentioned and described, situate in the counties of —— and

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

Usual powers.

Covenant for payment.

Recital of demise to trustee.

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ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

——, and their rights, royalties, members, and appurtenances: *To hold* the same unto the said [*trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the said indenture now in recital, for the term of (ninety-nine years) if the said [*grantor*] should so long live; *Upon* and for the trusts, intents, and purposes therein declared or expressed of or concerning the same, for better securing the payment of the said annual sum or yearly rent-charge: AND by the said indenture now in recital the said [*grantor*] further covenanted with the said [*grantee*], his executors, administrators, and assigns, that he would, when and where required, attend personally at any of the offices of insurance in London or Westminster, so that his life might be insured and kept insured; and upon his leaving, or intending to leave Great Britain, give notice thereof in writing to the said [*grantee*], his executors, administrators, and assigns, one calendar month at least before his departure, in order to prevent the policy of the said annuitant from being voidable; and would, in any case of his leaving Great Britain, pay unto the said [*grantee*], his executors, administrators, and assigns, the additional premium which would be demanded at any of the said insurance offices for insuring any sum on the life of the said [*grantor*], not exceeding —— pounds, in consequence of his quitting Great Britain, and against the risque of the seas: *And* in the said indenture now in recital is contained a proviso for enabling the said [*grantor*] to repurchase the said annual sum or yearly rent-charge of —— hundred and —— pounds, upon the trusts therein mentioned. AND WHEREAS the said annual sum or yearly rent-charge is further secured by a judgment confessed by the said [*grantor*]: AND WHEREAS the said [*grantee*] hath effected with the (Albion) Insurance Company an insurance on the life of the said [*grantor*] for the sum of —— thousand pounds; and that sum is, for the annual premium of —— pounds, assured to be paid to the said [*grantee*], his executors, administrators,* or assigns, on the decease of the said [*grantor*], by a policy of assurance under the hands and seals of some of the directors of that company, bearing date on or about the —— day of ——, one thousand eight hundred and ——:

Recital of covenant to appear at any insurance office, and to give notice and pay additional premiums on going abroad.

Recital of power of repurchase.

Reference to judgment.

Recital of policy of insurance.

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ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

AND WHEREAS a marriage hath been agreed upon, and is intended to be shortly had and solemnized between the said [*intended husband*] and [*intended wife*]: *And* upon the treaty for the said intended marriage, it was agreed (amongst other things) that the said annual sum or yearly rent-charge of —— hundred and —— pounds, and the additional premium to be paid as aforesaid to the said [*grantee*], his executors, administrators, and assigns, by the said [*grantor*], in case of his leaving Great Britain, and the monies to be paid or given by the said [*grantor*] for the re-purchase of the said annual sum or yearly rent-charge, in case the same should be re-purchased as aforesaid, and the said policy of assurance, and the monies assured thereby, should be assigned to the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts hereinafter declared or referred to concerning the same. NOW THIS INDENTURE WITNESSETH, that in pursuance and performance of the said agreement, and in consideration of the said intended marriage, and of the sum of ten shillings of lawful money of Great Britain, to the said [*grantee*] paid by the said [*trustees*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *He* the said [*grantee*], with the privity and approbation of the said [*intended husband*] and [*intended wife*], (testified respectively by their being parties to and sealing and delivering these presents) *hath* granted, bargained, sold, and assigned; *And* by these presents *doth* grant, bargain, sell, and assign unto the said [*trustees*], their executors, administrators, and assigns, ALL THAT the said annual sum or yearly rent-charge of —— hundred and —— pounds, so granted and secured by the said recited indenture, and judgment, as hereinbefore is mentioned; *And* all future payments thereof; *And also* the said judgment, policy of assurance, and the additional premium, which, in pursuance of the covenant for that purpose contained in the hereinbefore recited indenture, is to be paid to the said [*grantee*], his *executors, administrators, or assigns, by the said [*grantor*], in case of his leaving Great Britain; *And* all the powers and remedies of him the said [*grantee*], for recovering and enforcing the payment thereof respectively;

Recital of intended marriage, and agreement to settle annuity, &c.

Testatum.

Grantee, with the approbation of his daughter and her intended husband,

assigns

annuity,

future payments, judgment, policy of insurance, and additional premium.

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All powers and remedies.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

Monies for repurchase.

And also all monies which shall be paid or given by the said [*grantor*] for the re-purchase of the said annual sum or yearly rent-charge, in case the same shall be re-purchased under or by virtue of the proviso for that purpose contained in the hereinbefore recited indenture; *And* the monies assured thereby: AND all the right, title, interest, possibility, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], in, to, or out of the said annual sum or yearly rent-charge, additional premium, and other monies and premises, hereby assigned, or intended so to be, and every of them, and every part thereof. TO HAVE, hold, receive, and take, the said annual sum or yearly rent-charge, additional premium, and other monies and premises, hereby assigned, or intended so to be, and every part thereof respectively, unto and by the said [*trustees*], their executors, administrators, and assigns, UPON and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed and declared of and concerning the same, in and by an indenture already prepared and engrossed, and bearing or intended to bear even date with these presents, and made, or intended to be made between the said [*grantee*], of the first part; the said [*intended husband*], of the second part; the said [*intended wife*], of the third part; and the said [*trustees*], of the fourth part; being the settlement made previously to and in consideration of the said intended marriage between the said [*intended husband*] and [*intended wife*]. [ADD *power of attorney from* [*grantee*] *to* [*trustees*], to ask, demand, distrain, sue for, recover, and receive, of and from all and every such persons and person who are, is, or shall or may be liable to pay the same respectively, the said annual sum or yearly rent-charge, additional premium, and other monies, hereby assigned, or intended so to be, &c. *ut ante*, p. 360.] PROVIDED ALWAYS *and it is hereby agreed and declared* between and by the parties to these presents, that at any time or times hereafter*, it shall be lawful for the said [*trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, with the consent in writing of the said [*intended husband*] and [*in-*

All the right.

Habendum of the annuity, &c.

Upon trusts of settlement.

Power of attorney to receive and recover annuity, &c.

Power to trustees to sell annuity;

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tended wife], or the survivor of them; and after the decease of such survivor, at the discretion of the said trustees or trustee, absolutely to sell and dispose of the said annual sum or yearly rent-charge and policy, hereby assigned or intended so to be, and the monies assured by the said policy, either by public sale or private contract, to any person or persons willing to purchase the same, at the best price that can be had or gotten for the same, [with liberty to buy in the same at any auction or auctions]; *And* for the purpose of completing such sale, it shall be lawful for the said [*trustees*] and the survivor of them, and the executors, administrators, and assigns of such survivor, to enter into, do, and execute, all such contracts, acts, and deeds, as to them or him shall seem necessary and proper; AND *it is hereby agreed and declared*, that the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor, shall stand and be possessed of the monies to arise from such sale, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, agreements, and declarations, as are or shall be expressed and declared of and concerning the same, in and by the aforesaid indenture, bearing or intended to bear even date with these presents. PROVIDED ALWAYS, *and it is hereby agreed and declared* between and by the parties to these presents, that it shall be lawful for the said [*trustees*], and the survivor of them, and the executors, administrators, or assigns of such survivor, to sign and give any receipt or receipts in writing, for any sum or sums of money which shall or may be payable to them or him by virtue of this present indenture; *And* that the person or persons paying any such sum or sums of money as aforesaid, shall not afterwards be answerable or accountable for the mis-application or non-application, or be in any wise bound or concerned to see to the application of the money in such receipt or receipts expressed and acknowledged to be or to have been received, or to inquire into the necessity or propriety of the sale, which may be made in pursuance of *the power hereinbefore contained. AND THE SAID [*grantee*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree, with and to the said [*trustees*], their executors, administrators, and

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

and stand possessed of purchase monies upon trusts of settlement.

Indemnity clause to purchasers.

Covenant by grantee,

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ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

assigns, in manner following, that is to say; that the said annual sum or yearly rent-charge is well, effectually, and sufficiently secured in the manner hereinbefore mentioned and recited; And that he the said [*grantee*] now hath in himself good right, full power, and lawful and absolute authority, to assign the said annual sum or yearly rent-charge, additional premium, and other monies, hereby assigned unto the said [*trustees*], their executors, administrators, and assigns, in manner aforesaid, and according to the true intent and meaning of these presents: And that he the said [*grantee*], shall not nor will, at any time or times hereafter, revoke, annul, or make void the aforesaid power or authority, hereby given to the said [*trustees*], and the survivor of them, and the executors, administrators, and assigns of such survivor; *Or* make, do, or execute, or knowingly or willingly permit or suffer any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof, the said [*trustees*], their executors, administrators, or assigns, may, can, or shall be in any wise prevented or hindered from having, receiving, and taking the said annual sum or yearly rent-charge, or additional premium, and other monies and premises hereby assigned, or intended so to be, or any of them, or any part thereof respectively, Upon and for the trusts, intents, and purposes, hereinbefore declared or referred to, of and concerning the same: And further, that he the said [*grantee*], his executors and administrators, shall and will, at any time or times hereafter, upon every reasonable request of the said [*trustees*], their executors, administrators, or assigns, but at the expense of the said [*grantee*], his executors or administrators, make, do, and execute, or procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, matters, and *things, for the better and more effectually assigning, assuring, and confirming the said annual sum or yearly rent-charge, additional premium, and other monies and premises hereby assigned, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, and also for enabling them to recover and enforce the payment thereof respectively, Upon and for the trusts, intents, and purposes hereinbefore declared or referred to, of and

that annuity is well secured;

that he has good right to assign;

that he will not revoke power;

or prevent trustees from receiving annuity, &c.

For further assurance.

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concerning the same; *As* by the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel in the law, shall be reasonably devised, advised, and required (*b*). AND WHEREAS the hereinbefore re-

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

Recital, that depositary has the deed creating annuity.

(*b*) If the trustee of the term be a party, add,

"AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said parties to these presents, as far as they are respectively interested; [*and* the said [*trustee*], at the instance and request of the said [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree to and with the said [*trustees*], their executors, administrators and assigns,] That he the said [*trustee*], his executors, administrators, and assigns, shall and will, from time to time, and at all times hereafter, during the continuance of the said term of (ninety-nine) years, determinable as aforesaid, stand possessed of and be interested in the said lands and hereditaments, subject as aforesaid; UPON THE TRUSTS, and to and for the ends, intents, and purposes, expressed, declared, and contained, of and concerning the same, in and by the said in part recited indenture of the —— day of ——, 18—; *But so nevertheless*, that all benefit and advantage of the same trusts in favour of the said [*grantee*], his executors, administrators, and assigns, shall henceforth belong to, and be received and enjoyed by, the said [*trustees*], their executors, administrators, and assigns; *Upon*, and for the trusts, ends, intents, and purposes hereinbefore declared or referred to, of and concerning the same. AND THE SAID [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant and declare with and to the said [*trustees*], their executors, administrators, and assigns, that he the said [*trustee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby, or by means whereof the said lands and hereditaments, or the said term of (ninety-nine) years, determinable as aforesaid therein, or any part thereof respectively, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected."

TRUSTEE OF TERM A PARTY. Declaration, that trustee shall stand possessed of premises, Upon trust to secure annuity to trustees, Upon trusts of settlement, &c.

Covenant by trustee, that he has not incumbered.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

cited indenture of the —— day of ——, one thousand eight hundred and ——, is in the custody or possession of the said [*grantee of another annuity charged on the same premises, and depositary of title-deeds*], to whom a like annual sum or yearly rent-charge of —— hundred and —— pounds, during the life of the said [*grantor*], was granted and secured by the same indenture; And he hath agreed to enter into the covenant hereinafter contained in regard to the same. Now this indenture further witnesseth, that in pursuance and performance of the said agreement, and in consideration of the premises, he the said [*depositary*], doth hereby for himself, his executors, administrators, and assigns, covenant, promise, and agree, with and to the said [*trustees*], their executors, administrators, and assigns, that, unless hindered or prevented by fire or some other inevitable accident, he the said [*depositary*], his executors, administrators, or assigns, shall and will, from time to time, and at all times hereafter, while the said last-mentioned indenture shall remain and be in his or their possession or control, unless he or they shall be absent from the place of his or their usual abode, and then and so soon after as he or they shall return thereto, upon every reasonable request of the said [*trustees*], their executors, administrators or assigns, but at the expense of the said [*trustees*], their executors, administrators, or assigns, and on reasonable notice in writing being given to him or them, produce and shew forth, or cause to be produced and shewn forth, unto the said [*trustees*], their executors, administrators, or assigns, or their or any of their counsel, attornies, agents, or solicitors, or at any trial or hearing in any court *of law or equity, or at any commission for the examination of witnesses, or otherwise as occasion shall require, the hereinbefore recited indenture of the —— day of ——, one thousand eight hundred and ——, for the better evidencing, maintaining, and proving the title of the said [*trustees*], their executors, administrators, and assigns, of, in, and to the said annual sum or yearly rent-charge, additional premium, and other monies and premises secured or made payable by or in pursuance of that indenture, and hereby assigned, or intended so to be, or any part thereof respec-

Covenant by depositary to produce annuity deed.

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tively: And also shall and will, from time to time, and at all times hereafter, at the like request and expense, permit copies to be made and taken of the said indenture, by any person or persons whomsoever: And also shall and will in the mean time keep and preserve the same indenture undefaced, unobliterated, and uncancelled (*c*). In witness, &c.

ASSIGNMENT OF ANNUITY, ON TRUSTS OF INTENDED SETTLEMENT.

Permit copies to be taken. And keep deed undefaced.

(*c*) *Vide ante*, p. 2, (*b*).

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ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

ASSIGNMENT *of an* ANNUITY, *charged upon the Interest of Money in the Funds, and upon a Reversion in Fee, and a* POLICY OF INSURANCE *upon the Life of the Grantor, for the Benefit of an Infant, the Child of the Grantor, out of whose Money the same had been paid off, Upon Trusts declared by another Indenture of even Date.*

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; Between [*grantee*], of &c., of the first part; [*grantor*], of &c., widow and relict of [*husband*], late of &c., deceased, of the second part; [*cestui que trust*], an infant of the age of —— years, (daughter of the said [*grantor*] by her late husband, the said [*husband*],) of the third part; and [*three trustees*], of &c., of the fourth part. Whereas, by indenture bearing date on or about the —— day of ——, one thousand eight hundred and ——, and made between the said [*grantor*] by her then name and description of [*former name*], of &c., widow, of the one part; and the said [*grantee*], of the other part, *It was witnessed* that in pursuance of an agreement therein recited, and in consideration of the sum of —— thousand pounds to the said [*grantor*] paid by the said [*grantee*], she the said [*grantor*] Did grant, bargain, sell, and confirm unto the said [*grantee*], his exe-

Parties.

Recital of grant of annuity for the life of grantor, charged upon dividends and reversion in fee.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

cutors, administrators, and assigns, during the natural life of her the said [*grantor*], *One* annuity or clear yearly sum of —— hundred and —— pounds, to be issuing out of and charged upon a certain annual sum of —— hundred and —— pounds bank short annuities, which were to continue for the term of twenty-nine years, [*415] *from the twenty-sixth day of January, 1779, (which said annuities have since ceased); and upon all such dividends, interest, or annual proceeds of certain other bank annuities thereinbefore mentioned, or such other funds or securities, in or upon which the same or any part thereof had been or might be thereafter invested, as the said [*grantor*] then was, or should or might become interested in or entitled unto; and upon a moiety of the reversion in fee-simple, of and in certain messuages, &c., thereinbefore mentioned, and to which same moiety the said [*grantor*] was entitled in manner thereinbefore mentioned and recited, and the rents, issues, and profits of the same moiety: *To hold* the same annuity unto the said [*grantee*], his executors, administrators, and assigns, during the natural life of the said [*grantor*] to be paid by equal quarterly payments on the —— day of ——, &c. in every year: *And* the said [*grantor*] did thereby appoint the said [*grantee*], his executors, administrators, and assigns, to be her attorney and attornies, with full power and authority to recover and receive the said annuity from the trustee or trustees for the time being, of the settlement or wills thereinbefore recited, out of the aforesaid bank short annuities, and the said dividends, interest, or annual proceeds of the said other stocks, funds and securities, and the rents and profits upon which the said annuity was so charged as aforesaid: *And* by the indenture now being recited, powers of entry and distress upon and perception of the rents and profits of the said moiety, hereditaments, and premises, thereby charged as aforesaid, are given to the said [*grantee*], his executors, administrators, and assigns, for the better securing the aforesaid annuity: *And* the said [*grantor*] did thereby for herself, her heirs, executors, and administrators, covenant with the said [*grantee*], his executors, administrators, and assigns, to pay to him and them the said annuity thereby secured, at the times and in the manner

Recital of power of attorney to receive and recover dividends and rents.

Recital of powers of entry and distress.

Recital of covenant for payment of annuity.

thereinbefore mentioned and appointed for payment thereof: *And* in the now reciting indenture, there was contained a proviso declaring that in case the said [*grantor*] should at any time be desirous to repurchase the said annuity, and should give three months' notice in writing under her hand to the said [*grantee*], his executors, administrators, or *assigns, of such her intention, and should at the time fixed in such notice (which should be a day whereon some quarterly payment of the said annuity should become due), pay to the said [*grantee*], his executors, administrators, or assigns, the sum of —— thousand pounds over and above such quarterly payment, and all arrears of the said annuity, then, and in such case, the future payment of the said annuity to the said [*grantee*], his executors, administrators, and assigns, should cease and determine. And whereas the said [*grantee*], at the time of the execution of the aforesaid indenture, took out a policy of insurance on the life of the said [*grantor*], in the office of the society for equitable assurance on lives and survivorships, which said policy is dated the —— day of ——, 18—, and numbered ——, and the life of the said [*grantor*] was thereby insured at the sum of —— thousand pounds. And whereas the said [*grantor*] intermarried with her said late husband, the said [*husband*], in or about the year 18—; *And* the said [*husband*] departed this life in or about the month of June, 18—. And whereas, in or about the month of ——, 18—, the sum of —— thousand pounds was paid to the said [*grantee*], for which he signed a receipt, acknowledging the same to be in full for the re-purchase of the aforesaid annuity; *And* at the same time the sum of —— hundred pounds —— shillings and —— pence, being the amount of a benefit which had arisen on the said policy from the time of taking out the same (*a*), was also paid to the said [*gran-*

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

Recital of proviso for repurchase.

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Recital of policy of assurance on grantor's life.

Recital of grantor's inter-marriage, and death of her husband.

Recital of repurchase of annuity.

Of consideration paid for benefit of policy.

(*a*) Before the grantee of an annuity effects an insurance on the life of the grantor, he should ascertain whether the office will *at any time* repurchase his interest in the policy: in the above instance, as the insurance had been effected for some years, several hundred pounds were paid to the grantee for the benefit of the policy, which was very advantageous to him, as he also received the annuity, and the full sum originally paid

Grantee should inquire whether insurance office will purchase benefit of policy.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

tee], as the purchase money for the said policy; *And* the said several sums of —— thousand pounds, and —— *hundred pounds, —— shillings, and —— pence, were paid out of monies belonging to the said [*cestui que trust*], but no assignment hath hitherto been made by the said [*grantee*], of the said annuity, or of the aforesaid policy.

And that the same was paid out of monies belonging to the infant child of the grantor.

And whereas the said [*grantee*] hath, at the request of the said [*grantor*], and of her said daughter the said [*cestui que trust*], agreed to assign the said annuity and all arrears now due, and hereafter to accrue due in respect thereof, and also the aforesaid policy of insurance, and all benefit and advantage thereof, unto the said [*trustees*], as trustees thereof, Upon such trusts and in such manner as hereinafter is expressed; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said recited agreement in this behalf, and in consideration of the premises, and of ten shillings to the said [*grantee*] paid by the said [*trustees*] upon the execution of these presents, the receipt whereof is hereby acknowledged, *He* the said [*grantee*], at the request and by the direction of the said [*grantor*] and [*cestui que trust*], (testified by their severally sealing and delivering these presents,) *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*trustees*], their executors, administrators, and assigns, All that, the said annuity, clear yearly sum or yearly rent-charge of —— hundred and —— pounds, secured as aforesaid by the hereinbefore recited indenture of the —— day of ——, 18—: And all arrears now due, and hereafter to become due in respect of the same annuity: And all and singular the powers, authorities, and remedies whatsoever by the same indenture given and granted for recovering and enforcing the payment thereof; *And* the covenants and agreements therein contained for securing the regular payment of the same annuity, and such arrears thereof as aforesaid: *And also* All that the aforesaid policy of assurance, and all present and future

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No assignment previously made by grantee.

Recital of agreement by grantee to assign annuity and policy to trustees.

Testatum.

Assignment by grantee, at request of grantor and *cestui que trust*, to trustees of

annuity.

Arrears.

All powers, &c.

Policy.

for the purchase. Some of the insurance offices will not repurchase the benefit of the policy, unless it has been granted for a certain number of years; others of them will repurchase at any time.

benefit and advantage thereof, and all monies whatsoever, recoverable by virtue of the same policy: And all the right, title, interest, trust, property, claim, and demand whatsoever, both at law and in equity, of him the said [*grantee*], of, in, to, or out of the said annuity, arrears, policy, monies, and premises hereby assigned, or expressed or *intended so to be, and every or any part thereof; To have, hold, receive, take, and enjoy the said annuity, arrears, policy, monies, and all and singular other the premises hereby assigned or expressed, or intended so to be, unto the said [*trustees*], their executors, administrators, and assigns, from the —— day of —— last past, for and during the natural life of the said [*grantor*], as fully, amply, absolutely, and beneficially, to all intents and purposes whatsoever, as he the said [*grantee*], his executors or administrators, could have enjoyed, received, and taken the same, if these presents had not been made, and if the said [*grantee*] had not received the said several sums of —— thousand pounds, and —— hundred pounds, —— shillings and —— pence, so paid to him as hereinbefore is mentioned and recited; *Nevertheless, Upon* and for the trusts, intents, and purposes, and subject to the powers and provisoes, declared and expressed of and concerning the same, in and by a certain indenture already prepared and engrossed, and intended to bear even date with these presents, and to be made between the said [*grantor*] of the first part; the said [*cestui que trust*] of the second part; and the said [*trustees*] of the third part: And upon or for no other trust, intent, or purpose whatsoever. And the said [*grantee*] doth hereby make, ordain, constitute, and appoint the said [*trustees*], their executors, administrators, and assigns, to be his true and lawful attornies and attorney, irrevocably, in the name or names of him the said [*grantee*], his executors, or administrators, but upon and for the trusts aforesaid, to ask, demand, distrain, sue for, recover, and receive of and from every or any person or persons who is or are, or shall or may be interested or liable to pay the same respectively, the said annuity, arrears, policy, monies, and premises hereby assigned or expressed, or intended so to be, and all and every other sum or sums of money due or to become due

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

All the right.

Habendum.

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Upon trusts declared by indenture of even date.

Power of attorney to receive and recover annuity, &c.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

under or by virtue of the said in part recited indenture and policy of insurance, or either of them, and every or any part or parts thereof respectively: And on receiving the same, or any part thereof respectively, in the name or names of him the said [*grantee*], his executors or administrators, to make, execute, and give good and sufficient releases and discharges for the same; And for all or any of the purposes aforesaid, from time to time to nominate and appoint one or more attorney or attornies under them the said [*trustees*], their executors, administrators, or assigns, and to revoke, alter, or vary such nomination and appointment at their or his pleasure; And generally to do and execute all and every such further and other lawful acts and things, for recovering and receiving the same annuity, arrears, policy, monies, and premises hereby assigned or mentioned, or intended so to be, as he the said [*grantee*], his executors or administrators could or might have done in the premises; *He* the said [*grantee*] hereby allowing, ratifying, and confirming, and agreeing to allow, ratify, and confirm all and whatsoever the said [*trustees*], their executors, administrators, or assigns, shall do or cause to be done in the premises by virtue of these presents.

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Covenant by vendor, that he hath not assigned annuity, &c.

And the said [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustees*], their executors, administrators, and assigns, that he the said [*grantee*] hath not at any time heretofore assigned or set over the said annuity, arrears, policy, monies, and premises hereby assigned or expressed, or intended so to be, or released, or discharged the same, or any part thereof respectively; And that he the said [*grantee*], now hath in himself good right and lawful authority to assign the same annuity, arrears, policy, and premises unto them the said [*trustees*], their executors, administrators, and assigns, *Upon* the trusts and in manner aforesaid, according to the true intent and meaning of these presents: And that he the said [*grantee*], his executors, or administrators, shall not, nor will at any time hereafter, without the consent in writing of the said [*trustees*], their executors, administrators, or assigns, alter, revoke, or annul, all or any of the powers, or authorities hereinbefore contained and given to the said [*trustees*],

For title.

Not to revoke powers.

their executors, administrators, and assigns: AND that it shall and may be lawful to and for the said [*trustees*], their executors, administrators, and assigns, to receive and take the said annuity, and other the monies hereby assigned, or intended so to be, when and as the same shall respectively become due and payable, without any let, suit, * or interruption whatsoever, of, from, or by him the said [*grantee*], his executors or administrators: AND free and clear of and from all charges and incumbrances whatsoever, made, done, and committed, and to be made, done, and committed by him the said [*grantee*], his executors or administrators; AND FURTHER, that he the said [*grantee*], his executors, or administrators, shall and will from time to time, and at all times hereafter, upon the reasonable request, and at the costs and charges of the said [*trustees*], their executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for the further, better, more perfectly, and absolutely assigning and assuring the said annuity, arrears, policy, monies, and premises hereby assigned or expressed, or intended so to be, and every part thereof, unto the said [*trustees*], their executors, administrators, and assigns, or for better enabling them or him to recover and receive the same, *As* by the said [*trustees*], their executors, administrators, or assigns, or their or his counsel in the law, shall be reasonably devised or advised and required (*b*). IN WITNESS, &c.

ASSIGNMENT OF ANNUITY AND POLICY UPON TRUSTS OF ANOTHER DEED.

For peaceable enjoyment.

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Free from incumbrances.

For further assurance.

(*b*) In the above deed, or in the deed referred to, there should be inserted a power, enabling the trustees to sell the annuity and policy, and to lay out the money in the funds, &c. *Vide ante*, p. 408.

Trustees should have power of sale.

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

ASSIGNMENT *of an* ANNUITY, BOND, WARRANT OF ATTORNEY, *and* JUDGMENT, *and a* TERM FOR YEARS, *on a* REPURCHASE, *to two separate Trustees,* In trust *for the Grantor; either by Indorsement on the Grant, or by another Deed.*

THIS INDENTURE, made the —— day of ——, [in the —— year of the reign of our sovereign Lord *George* the *Fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland, King, Defender of the Faith, and] in the year of our Lord Christ one thousand eight hundred and ——; BETWEEN (*a*) [*grantee*], of &c., of the first part; [*trustee of term*], of &c., of the second part; Sir [*grantor*], of &c., baronet, (late ——, esquire), of the third part; [*assignee of annuity*], of &c., of the fourth part; and [*assignee of term*], of the fifth part. (WHEREAS by a certain indenture, bearing date on or about the —— day of ——, one thousand eight hundred and ——, and made, or mentioned to be made, between the said Sir [*grantor*], (then —— esquire), of the first part; the said [*grantee*], of the second part; and the said [*trustee*], of the third part: *It is witnessed*, that in consi*deration of the sum of —— thousand and —— pounds, by the said [*grantee*], paid to the said Sir [*grantor*], *He* the said Sir

Parties.

Recital of

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grant of annuity

BY INDORSEMENT.

(*a*) If the assignment be made by indorsement on the grant, instead of describing the persons of the first, second, and third parts, say—

" the within-named [*grantee*], of the first part; the within-named [*trustee*], of the second part; the within-named [*grantor*], now Sir [*grantor*], baronet, of the third part; and [*assignee*]," &c. *ut supra.*

In which case omit the recitals included in parentheses, and begin " WHEREAS," &c. *the recital of contract for repurchase,* post, p. 423.

[*grantor*] did grant, bargain, sell, and confirm unto the said [*grantee*], her executors, administrators, and assigns, *One* annuity or clear yearly sum of —— hundred and —— pounds; to be paid and payable for and during the term of (ninety-nine) years, if the said Sir [*grantor*] should so long live; and to be charged upon, and yearly issuing out of, all and singular the manor, messuages, lands, tenements, rectories, tithes, rent-charges, and hereditaments, situate, lying, and being, in the counties of —— and ——, and devised by the will of [*testator*], of &c., deceased; a recital or particular of which was annexed by way of schedule to an indenture or deed of receivership, bearing even date with the said indenture, and by which [*receiver*], of &c., was appointed receiver of the rents and profits of the said estates, on behalf of the several persons who were purchasers of annuities from the said Sir [*grantor*]: *To hold* the same unto and by the said [*grantee*], her executors, administrators, and assigns, for and during the said term of (ninety-nine) years, if the said Sir [*grantor*] should so long live (*Subject* as therein mentioned); and the said annuity to be paid by equal quarterly payments as therein mentioned, without any deduction or abatement whatsoever: And by the said indenture it was declared, that if the said Sir [*grantor*] should depart this life on any other day than one of the said quarterly days of payment of the said annuity hereinbefore referred to, then a proportionable part of the said annuity or yearly sum of —— hundred and —— pounds, should be paid to the said [*grantee*], her executors, administrators, and assigns, immediately after the decease of the said Sir [*grantor*], for the time which he should have lived of the then current quarter of a year: And *it was further witnessed*, that for the considerations aforesaid, and for the better securing the payment of the said annuity, *He* the said Sir [*grantor*], at the request and upon the nomination of the said [*grantee*], did grant, bargain, sell, and demise, unto the said [*trustee*], his executors and administrators, *All those* the manors, messuages, lands, tenements, hereditaments, and all and sin-
*gular other the premises thereby charged with the payment of the said annuity or yearly sum of —— hundred and —— pounds, with the appurtenances. *To hold* the

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

for ninety-nine years, if grantor should so long live,

charged upon manors, &c.

mentioned in deed of receivership of even date.

Habendum.

With proportionate payment.

Recital of

demise to trustee of parcels.

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Habendum for years.

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

same unto the said [*trustee*], his executors, administrators, and assigns, for the term of (one hundred and fifty) years, to commence from the day next before the day of the date of the now reciting indenture; *Upon* the trusts therein mentioned, for the better and more effectually securing the payment of the said annuity: AND in the said indenture is contained a power enabling the said Sir [*grantor*] to repurchase the said annuity on the terms and conditions therein mentioned and expressed. AND WHEREAS the said Sir [*grantor*] hath contracted and agreed with the said [*grantee*], for the repurchase of the said annuity or clear yearly sum of —— hundred and —— pounds, granted and secured to her by the (*b*) (said recited) indenture for the sum of —— thousand —— hundred and —— pounds: AND the said Sir [*grantor*], being desirous of keeping on foot the said annuity and the several securities for the same, hath requested the said [*grantee*] to assign and make over the said annuity or yearly sum of —— hundred and —— pounds, and the several securities for the same, and all benefit and advantage thereof, unto the said [*assignee of annuity*], his executors, administrators, and assigns, Upon the trusts hereinafter mentioned or referred unto; which she hath contracted and agreed to do: AND it hath been also agreed that the said [*trustee*] shall assign all the now residue and remainder of the (*c*) (said) term, of (one hundred and fifty) years, and the several manors, hereditaments, and premises, therein comprised, unto the said [*assignee of term*], his executors, administrators, and assigns, Upon the trusts and in the manner hereinafter also mentioned. AND WHEREAS, all arrears of the said annuity or yearly sum of ——*hundred and —— pounds, have been paid and discharged by the said Sir [*grantor*] up to the day of the date of these presents, as she the said [*grantee*] doth hereby admit, acknowledge, and declare; (*But* the said recited indenture hath been lost or de-

Upon trusts for securing annuity.

Power to repurchase.

Recital of contract for repurchase.

Recital of grantor's desire to keep annuity and term on foot, and grantee's and trustee's consent thereto.

Recital that arrears have been paid;

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but that indenture hath been lost.

BY INDORSEMENT.

(*b*) If by indorsement, say—
" within written"

BY INDORSEMENT.

(*c*) If by indorsement, say—
" within mentioned"

stroyed, and cannot now be found). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for and in consideration of the premises, and of the sum of —— thousand —— hundred and —— pounds of lawful money of Great Britain to the said [*grantee*] in hand, at or before the sealing and delivery of these presents, well and truly paid by the said Sir [*grantor*]; the receipt of which sum of —— thousand —— hundred and —— pounds, being in full for the absolute repurchase of the said annuity or yearly sum of —— hundred and —— pounds, so granted and secured as(*d*) (aforesaid), she the said [*grantee*] doth hereby admit and acknowledge; and of and from the same and every part thereof, doth acquit, release, and for ever discharge the said Sir [*grantor*], his heirs, executors, and administrators, and every of them, by these presents; *And also* for and in consideration of the sum of ten shillings of like lawful money to the said [*grantee*] in hand also well and truly paid by the said [*assignee of annuity*], the receipt whereof is hereby acknowledged, *She* the said [*grantee*], at the request and by the direction of the said Sir [*grantor*], testified by his executing these presents, *hath*(*e*) bargained,

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

Testatum.

Consideration.

Nominal consideration.

Assignment by grantee by direction of grantor to assignee.

(*d*) If by indorsement, say—

BY INDORSEMENT.

"in the within written indenture is mentioned,"

(*e*) It having been supposed, that the word *grant* in any conveyance will create an *implied warranty*, trustees, and persons acting in the character of trustees, such as executors and administrators, who are not beneficially interested in the purchase money, mortgagees, annuitants, and other incumbrancers who have been paid off, are frequently advised not to convey by the word *grant*. 4 Cru. Dig. 433, 2d ed.

Trustees, &c. frequently advised not to convey by the word *grant*.

Perkins's "profitable book" says, the word *dedi* comprehends the effect and force of the word *concessi*, and more: because *dedi* in a feoffment comprehends in it a warranty against the feoffor, which *concessi* does not. Perk. French ed. 26 a, s. 124; see also Noy's Maxims, 139, 5th ed; 261, 262, 9th ed. And Lord Coke, in the chapter on warranty, says, a warranty in deed, or an express warranty, is created *only by the word *warrantizo;* but warranties in law, or implied warranties, are created by many other words; and therefore they are called warranties in law, because, in judgment of law, they amount to a warranty, without the word *warrantizo;* as *dedi* is a warranty in law to the feoffee and his heirs dur-

Perkins, Coke, and Butler, of opinion that *grant* does not imply a warranty.

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sold, assigned, transferred, and set over; *And* by these

ing the life of the feoffor, but *concessi* in a feoffment, or fine, implies no warranty. Co. Litt. 384 b. Mr. Butler, in a note to this passage, says, what is said in this place, and the determination of the judges in *Nokes'* case, 4 Rep. 80; and Lord Chief Justice Vaughan's argument in *Hayes* v. *Bickerstaff*, in his Reports, page 126, should remove the scruples too often entertained on the part of trustees, respecting the propriety of their conveying by the word *grant*. From the passages here referred to, it most clearly appears, that the word *grant*, when used in the conveyance of an estate of inheritance, does not imply a warranty; and that if it did, the insertion of any express covenant on the part of the grantor, would qualify and restrain its force and operation within the import and effect of that covenant, as the law, when it appears by express words how far the parties designed the warranty should extend, will not carry it farther by construction. There is, therefore, no reasonable ground for trustees objecting to convey by the word *grant;* but serious objections may be raised in some cases to purchasers taking a conveyance from them without it. These are stated in the following passage from Bridgman's Complete Conveyancer, vol. 1, p. 323:—"Sir Jeffrey Palmer's resolution concerning the words *give* and *grant* in a conveyance. Sir, I conceive that care ought to be taken in a conveyance, of what nature soever it be, that there be not therein *give* and *grant;* for they imply a *general warranty*, and shall not be qualified by the *special warranty* following; as hath of late been thrice adjudged. H. T.—Sir Jeffrey Palmer's answer. *Give* implies a *personal warranty*, and so is not always used. The word *grant*, in a lease for years, is a *covenant in law;* or (as you may call it) a *general warranty*, if it be not qualified by a *covenant* or *warranty in fait*: but if there be a *covenant* or *warranty in fait*, then it is restrained to the words of the *covenant* subsequent. But in an *estate of inheritance* where the *fee* passeth, there the word *grant* is neither a *covenant in law*, nor *warranty*. For if it should be a *covenant in law*, or *warranty* in itself, it would be there restrained and qualified by the *warranty* and *covenants in fait*. And a *deed* to pass an *inheritance* where *common* is, cannot be without it; for if it be *common in gross*, it cannot pass by the livery, but must pass by the word *grant*. And I never yet saw a *feoffment* without it. Jeffrey Palmer." This dictum of Sir Jeffrey Palmer has been sometimes cited to prove, that it is not safe for pur*chasers to take a conveyance by lease and release, or bargain and sale enrolled, if the conveyance be from the trustees, and they do not convey by the word *grant*. It is said that commons, or advowsons, or other things which be in grant, will not, if they are severed from the inheritance, pass without the word *grant*. But this is a mistake, and by no means warranted by Sir Jeffrey Palmer's *dictum*, which evi-

An express covenant restrains an implied warranty.

No reasonable ground for trustees objecting to convey by the word *grant;* objections in some cases to purchasers taking a feoffment without it.

Sir Jeffrey Palmer's opinion on the effect of the words *give* and *grant*.

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presents *doth* bargain, sell, assign, transfer, and set over, ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

dently applies only to conveyances by feoffment; in which case commons in gross, &c. lying in grant, would not pass by the livery, and therefore without the word *grant*, or some other word of a similar operation, would not pass by the charter of feoffment. In the case of a lease and release, there is no doubt but that any thing which lies in *grant*, will vest in the vendee, by the lease for a year, and that a release, without the word *grant*, would operate by way of enlargement to give the releasee the fee. 2 Cas. & Opin. 143. So, in the case of a bargain and sale enrolled, any thing which lies in grant, will vest in the bargainee by the statute of uses without the word grant. Upon the whole, therefore, there is no such peculiar operation in this famous monosyllable, as to make it either dangerous for a trustee to convey by it, or essential for a purchaser to require it.

The word *grant* not necessary in a lease and release, or in a bargain and sale enrolled of things lying in grant.

Conclusion.

How a *covenant* shall be expounded with regard to the context, or to synonymous or other words, see Com. Dig. *Covenant*, (D); 6 Vin. Abr. 406; *Covenant* (L 4).

Covenant expounded by the context.

To explain more fully what is said above, it may be proper to state at length the operation of the word "grant" or "give," in conveyances of estates in fee simple, in gifts in tail, in leases for life, and in leases for years.—1*st*. *As to the operation of the word "grant" or "give," in conveyances of estates in fee simple*, it is to be observed, that, till the practice of sabinfeudation was established by the statute *quia emptores terrarum*, lands might be granted, either to be held of the grantor himself, or to be held of the chief lord of the fee. When they were granted to be held of the grantor himself, at least if the grant were made by the word "*dedi*," there, without any other warranty, the feoffor and his heirs were bound to warranty. This is enacted by the statute *de bigamis*, 4 Edw. 1, cap. 6; 2 Inst. 274; and we have Lord Coke's authority that this statute was only declaratory of the common law, in this respect. The reason for implying warranty, in this case, is by his Lordship said to be, that, "where *dedi* is accompanied with a perdurable tenure of the feoffor and his heirs, there *dedi* importeth a perdurable warranty for the feoffor and his heirs to the feoffee and his heirs." 2 Inst. 275. The warranty in this instance was therefore a consequence of tenure, (Co. Litt. 101 b), and so neces*sary a consequence of it, that, where an express and qualified warranty was introduced, it did not restrain or circumscribe the *implied* [Watk. n. Gilb. Ten. 401] warranty. Where lands were granted to be held of the chief lord of the fee, there the tenancy was of the chief lord, and no tenure subsisted between the grantor and the grantee. Warranty, therefore, being a consequence of tenure, did not hold in these cases between the grantor and grantee, as there was no tenure between them to raise it. Still, the

Operation of *grant* or *give*.

1st. In conveyances in fee simple.

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unto the said [*assignee of annuity*], his executors, admin-

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grantor was supposed to be bound by his own gift. The word "give," therefore, imported, in this case, a warranty to him. But this was personal to the grantor; it did not apply to the heir, and it could not affect him without working that involuntary alienation, which, in a case of that nature, the jurisprudence of those times did not readily admit. The statute "*quia emptores terrarum*," 18 Edw. 1, cap. 1; 2 Inst. 500, 66, put an end to the subinfeudation of fee-simple estates, and, of course, put an end to the warranty we have been speaking of, as incidents to grants of lands in fee-simple, to be held of the grantor and his heirs. The consequence was, that, after the statute *quia emptores terrarum*, there was no case, except that of homage auncestrel, in which warranty, unless it arose from the express contract of the parties, bound any person besides the donor, or bound him any longer than the term of his life. 2dly, *But with respect to estates tail and leases for life*, the judges took this important distinction, that, where a person seized in fee granted for life or in tail, reserving the reversion in himself, the grantees of the particular estates held of the reversioner, and he of the chief lord: where a person granted for life or in tail, with the remainder over in fee-simple, both the tenants of the particular estates, and the remainder-men, held of the chief lord. In the former case, therefore, the tenure between the donor and the donees still subsisting, the law remained as it did before the statute; that is, when those estates were created by the word "*dedi*," both the donor and his heirs were, in consequence of the tenure, obliged to warranty. Thus it stood in respect of grants in fee-simple, in tail, or for life; and in all these cases the warranty must be understood in its strict legal import, as implying an obligation in the lord to acquit his tenant against the superior lord, where there was a seignory paramount, and to give the tenant a recompence in case of eviction. 3dly. *But in leases for years*, (to which the subject now leads), the case is very different. A lease for years, (See Bacon's Abr. tit. *Leases and Terms for Years*), is a contract between the lessor and the lessee for the possession and profits of land on the one side, and a recompence by rent, or other consideration, on the other. As the [*428] *lessor contracts that the lessee shall hold the land, he cannot claim it in opposition to his covenant. Thus, he parts with the land during the term; but his supposed parting with the land, and the interest of the lessee in it, during the term, was rather a consequence of law accruing from the contract, than the contract for the enjoyment, a consequence of law accruing from the parting with the land. The tenant, therefore, had only the perception of the profits, and was considered to hold the possession for the reversioner. The consequence was, that whoever recovered the freehold, reduced the term, whether the recovery were true or feigned.

2ndly. In gifts in tail, and leases for life.

3dly. In leases for years.

istrators, and assigns, ALL THAT the said annuity or clear

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

Annuity.

As the possession was not considered to be in the lessee, there was originally no means by which he could recover it. His only remedy was in consequence of the contract, which constituted the lease. By virtue of that, the words "yielding and paying," &c. were construed a covenant in favour of the lord, which enabled him to recover his rent by an action of covenant, or an action of debt, and the words, "grant, demise," &c. were construed a covenant in favour of the tenant, which enabled him to recover damages as a recompence for the possession lost. In this sense they are said to imply a warranty. From the warranty of freehold estates it differs in its nature, as that arises from tenure, this from contract; and in its operation, as that, being a consequence of tenure, is not modelled by express warranties, this, arising from the contract of the parties, is considered to be modified and regulated by any express covenants inserted in the lease. See *Spencer's* case, 5 Rep. 17; *Brown* v. *Brown*, 1 Lev. 57; *Deering* v. *Farrington*, 1 Mod. 113; and *Clarke* v. *Samson*, 1 Ves. sen. 101; Lord Coke, 101 b, 389 a, Co. Litt. expressly says, that, warranty cannot be annexed to chattels real or personal; for, says his Lordship, if a man warrants them, the party shall have covenant or action upon the case.

Homage auncestrel.

Thus, therefore, the law stands since the statute *quia emptores*. In all cases of homage auncestrel, if any such now exist, (which is at least doubtful), the doctrine of warranty remains as it did before the statute; that is, if the grant was made by the word "*dedi*," it imports a warranty. In other cases it may be expressed as the parties think proper: if it be not expressed, then, in conveyances in fee simple, it is not implied by the word "grant," or any other word except the word "give;" and then it holds only during the life of the grantor: in gifts in tail, and in leases for life, by the word "give," where the reversion is left in the donor, the tenure between him and the donee or lessee still continues. Of that tenure it is a necessary consequence of law, and is not considered to be restrained by any *express covenants. In leases for years, rendering rent, warranty, considering it to import a covenant for the quiet enjoyment of the term, is of the essence itself of the lease; but the lease being originally founded on contract, any of its terms may be varied by the parties themselves at their pleasure, and is, in fact, considered as varied *pro tanto* by the insertion of any express covenant. But the effect of an express covenant in restraining the effect of an implied general covenant is not to be confounded with the effect of a particular covenant in restraining the effect of an express general covenant, as the latter is not restrained by a subsequent covenant, unless it can be considered as part of the general covenant. See

In conveyances in fee warranty implied by no other word but "give."

Gifts in tail and leases for life.

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ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

yearly sum of —— hundred and —— pounds, which in

Nokes's case, 4 Rep. 80; and 1 Saund. 60. It may happen, that *a person having a term of years only, conveys the lands as an estate in fee simple* to another and his heirs, by the word "grant." But this cannot amount to a warranty of the lands for the term. The operation of the word "grant" in implying a warranty in the creation or assignment of a term, arises from implication only, that is, from the law's presuming, by the party's using the word "grant," that he intended to warrant the lands as a term. But his expressly treating the land in the deed as a fee-simple estate, and expressly conveying it as such, necessarily rebuts every implication of its being his intention or undertaking to convey it as a term of years. In what has been said above, the grantor is considered as the real owner of the land, receiving the purchase money, or other consideration for the estate or interest parted with. In this case, independently of all construction of particular words, there is great reason to consider him bound to warrant the property he parts with, as he receives the benefit of it. In the case of a trustee, this ground of raising or implying an obligation of warranty necessarily fails.

Conveyance of a fee by the word *grant*, by term or for years.

Upon the whole, to apply what has been said to the point mentioned at the beginning of the note, it appears clear, that whenever there is a deed, on the face of which the trustee is party, and conveys, merely as trustee, there is no substantial objection to his conveying by the word "grant." If the lands are freehold, it is clear that no warranty or covenant is imported by it; if it happens that they are held for a term of years only, all implication of an intention or undertaking to convey them for the term, is necessarily rebutted by their being treated in the deed, and conveyed by the party, as a fee-simple estate; and if any such warranty or covenant would otherwise be implied, it would be restrained, by his covenant, that he himself has done no act to encumber, to a warranty or covenant against his own acts. To obviate, however, every doubt which may be entertained on *this ground, when the word *grant* is used, it is usual to make the trustee convey "according to his estate, right, or interest, but not further or otherwise," or to express that he grants, &c. "not as warranting the title, but in order to pass or convey the lands." Whenever the former words are inserted, care should be taken to make them referrible to the trustee only, and not to the owner of the fee; who, in express contradiction from the guarded mode of conveyance applied to the trustee, should be made to "grant," &c. "fully and absolutely."

Conclusion, that there is no objection to a trustee conveying by the word *grant*.

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It remains to inquire, what remedy a person purchasing under a defective title has, exclusively of the vendor's warranty or covenants, or where the title is subject to a defect, which the warranty or covenants do not reach. In every case where the seller conceals from the purchaser

Remedy of a person purchasing under a defective title.

and by the (*c*) (said recited) indenture was granted and secured by the said Sir [*grantor*], unto her the said [*grantee*], her executors, administrators, and assigns, for the said term of ninety-nine years, if the said Sir [*gran-*

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the instrument or the fact which occasions the defect, or conceals from him an incumbrance to which the estate is subject, it is a fraud, and the purchaser has the remedy of an action on the case, in the nature of an action of deceit. But a judgment obtained after the death of the seller, in an action of this nature, can only charge his property as a simple contract debt, and will not therefore, except under very particular circumstances, charge his real assets. A bill in Chancery, in most cases, will be found a better remedy. It will lead to a better discovery of the concealment, and the circumstances attending it, and may in some cases enable the court to create a trust in favour of the injured purchaser. In a late case, where the sellers knew of a defect in the title to a part of the estate, which was material to the enjoyment of the rest, and did not disclose the fact to the purchaser, and it could not be collected from the abstract, the purchaser, although he was not evicted, was relieved against the purchase in equity. The sellers were decreed to repay the purchase-money, with costs, and likewise all expenses which the purchaser had been put to relative to the sale, together with an allowance for any money he laid out in repairs, during the time he was in possession. *Edwards* v. *M'Leay*, Coop. 308; affirmed by Lord *Eldon* on appeal, 11 July, 1818, with a reservation of the question as to repairs. Sug. Vend. 416, 5th ed. But where the instrument or the fact, which occasions the defect in the title, or the instrument creating the incumbrance, is produced, the purchaser has fair notice given him of it, and if the covenants do not extend to it he appears to be without remedy, unless he can avail himself of the covenants of the earlier vendors, many of which are inherent to the lands, and to some of which, as the covenant for quiet enjoyment, there is no objection on account of their antiquity, where the breach is recent. It sometimes happens, that a purchaser *consents to take a defective title, relying for his security on the vendor's covenants. Where this is the case, this should be particularly mentioned to be the agreement of the parties; as it has been argued, that, as the defect in question was known, it must be understood to have been the agreement of the purchaser to take the title, subject to it, and that the covenants for the title should not extend to warrant it against this particular defect.—On the general doctrine respecting the usual covenants for title, see Mr. Sugden's Law of Vendors, ch. 13; Butl. n. Co. Lit. 384 a, (1). And as to the general operation of the word "grant," *vide post*, p. 452.

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(*c*) If by indorsement, say,

BY INDORSEMENT.

"within-written"

ASSIGNMENT OF ANNUITY AND SECURITIES ON RE-PURCHASE, IN TRUST FOR GRANTOR.

tor] should so long live, as therein is mentioned; *And* all future payments thereof; *And also* the collateral bond of the said Sir [*grantor*], in the penal sum of —— thousand and —— pounds, bearing even date with the (*c*) (said recited) indenture, and conditioned for the due payment of the said annuity; *Together* with the penalty of the same bond; *And also* the [warrant of attorney (*d*) mentioned in the (*c*) (said recited) indenture, and the] judgment which hath been entered up [in pursuance thereof] in his Majesty's Court of King's Bench, at Westminster, in or as of —— term one thousand eight hundred and ——, in an action of debt against the said Sir [*grantor*], at the suit of the said [*grantee*], for the sum of —— thousand and —— pounds, and eighty shillings costs; *Together* with all and every sums and sum of money to become due or payable thereupon; *And* all benefit and advantage to be had or derived therefrom: AND ALSO all the right, title, interest, trust, property, benefit, claim, *and demand whatsoever, both at law and in equity, of her the said [*grantee*], of, in, to, or out of the said annuity, judgment, monies, and premises intended to be hereby assigned, and every or any part or parcel thereof: *Together* with full power and authority for the said [*assignee of annuity*], his executors, administrators, or assigns, from time to time, to recover, receive, get in, and discharge the said annuity, monies, and premises, or any of them, or any part thereof, for or in the name or names, and as the attorney or attornies, of the said [*grantee*], her executors, administrators, or assigns, or any of them, either by action, suit, entry, distress, or otherwise: TO HAVE, hold, receive, perceive, take, and enjoy the said annuity or yearly sum of —— hundred and —— pounds, and all future payments thereof, and the said bond [warrant of attorney] and judgment, and all sum and sums of money to become due and payable, or recoverable thereupon respectively, and all benefit and advantage thereof, together with all such powers, authorities, and remedies as aforesaid, and

Future payments.

Collateral bond.

Warrant of attorney and judgment.

All sums, &c.

All benefit, &c.

And all the right, &c.

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Power of attorney to receive and recover annuity and monies.

Habendum of annuity, securities, monies, &c.

BY INDORSEMENT.

(*c*) If by indorsement, say, "within-written"

(*d*) The warrant of attorney is always filed on entering up the judgment.

all and singular other the premises hereby assigned, or mentioned, and intended so to be, unto and by the said [*assignee of annuity*], his executors, administrators, and assigns, as and for his and their own proper monies and effects; *But* UPON TRUST, *nevertheless*, for the said Sir [*grantor*], and to be paid, applied, held, assigned, or otherwise disposed of, upon such trusts, and to and for such ends, intents, and purposes, as he the said Sir [*grantor*] shall direct or appoint. AND THE SAID [*grantee*], for herself, her heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said [*assignee of annuity*], his executors, administrators, and assigns, That she the said [*grantee*] hath not at any time heretofore made, done, executed, or committed, or knowingly permitted or suffered to be made or done, any act, deed, matter, or thing whatsoever, whereby, or by reason or means whereof, the said annuity, bond, judgment, monies, and premises hereby assigned, or mentioned, and intended so to be, or any of them, or any part or parcel thereof, is, are, can, shall, or may be impeached, assigned, released, discharged, delayed in payment, or otherwise prejudicially affected, or incumbered, *in anywise howsoever. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance and performance of the said agreement, and for the several considerations and purposes hereinbefore expressed; *And also* in consideration of the sum of ten shillings of lawful money aforesaid, to the said [*trustee*] in hand at or before the sealing and delivery of these presents, well and truly paid by the said [*assignee of term*], the receipt whereof is hereby acknowledged, *He* the said [*trustee*], at the request and by the direction, as well of the said [*grantee*] as also of the said Sir [*grantor*], testified by their being made parties to and severally executing these presents, *hath* bargained, sold, assigned, transferred, and set over, AND by these presents *doth* bargain, sell, assign, transfer, and set over, unto the said [*assignee of term*], his executors, administrators, and assigns, ALL and singular the several manors, messuages, lands, tenements, hereditaments, and premises, which in

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

To assignee,

Upon trust for grantor.

Covenant by grantee against incumbrances.

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Further testatum.

Nominal consideration.

Assignment by trustee by direction of grantee and grantor to assignee.

Parcels.

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

and by the (*e*) (said recited) indenture were granted, bargained, sold, and demised by the said Sir [*grantor*] unto him the said [*trustee*], for the (*f*) (said) term of (one hundred and fifty) years, or were intended so to be, with their and every of their rights, members, and appurtenances: AND ALSO all the estate, right, title, interest, term and terms of years yet to come and unexpired, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of him the said [*trustee*], of, in, to, or out of the same several manors, messuages, lands, tenements, hereditaments, and premises, and every of them, and every part and parcel thereof. TO HAVE AND TO HOLD the said several manors, messuages, lands, tenements, hereditaments, and all and singular other the premises hereby lastly mentioned to be hereby assigned, or intended so to be, with their and every of their rights, members, and appurtenances, unto the said [*assignee of term*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the (*f*) (said) *term of (one hundred and fifty) years, granted and created in and by the (*g*) (said recited) indenture, and which is now to come and unexpired therein: *But* UPON SUCH TRUSTS *nevertheless*, and to and for such ends, intents, and purposes, and particularly for the raising and paying unto the said [*assignee of annuity*], his executors, administrators, or assigns, upon trust as aforesaid, the said annuity or yearly sum of —— hundred and —— pounds, when in arrear, as in and by the said recited indenture are mentioned, expressed, and declared, of and concerning the same. AND THE SAID [*trustee*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, declare, and agree with and to the said [*assignee of*

All the estate.

Habendum.

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Upon trusts for securing annuity.

Covenant by trustee against incumbrances.

BY INDORSEMENT. (*e*) If by indorsement, say, "within written"

BY INDORSEMENT. (*f*) If by indorsement, say, "within mentioned"

BY INDORSEMENT. (*g*) If by indorsement, say, "within written"

term], his executors, administrators, and assigns, That he the said [*trustee*] hath not at any time heretofore made, done, executed, or committed, or knowingly permitted or suffered to be made or done, any act, deed, matter or thing whatsoever, whereby or by reason or means whereof the said manors, messuages, lands, tenements, hereditaments, and premises hereby assigned, or intended so to be, or any of them, or any part thereof, or the said term of (one hundred and fifty) years therein are, is, can, shall, or may be impeached, charged, assigned, surrendered, or otherwise incumbered in any wise howsoever. IN WITNESS, &c.

ASSIGNMENT OF ANNUITY, AND SECURITIES ON REPURCHASE, IN TRUST FOR GRANTOR.

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ASSIGNMENT *of a* TERM *to* MERGE *as to Part of the Lands demised to secure an Annuity; and* ASSIGNMENT *of a* JUDGMENT *by the Annuitant to a Trustee, to enable the Grantor to sell the whole of his Lands not remaining subject to the Annuity.*

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

THIS INDENTURE, made the —— day of ——, in the —— year &c. George the fourth, &c., and in the year of our Lord 18—; BETWEEN [*grantee*], of &c., of the first part; [*trustee of judgment*], of &c., of the second part; [*two trustees for sale*], of &c., of the third part; and [*grantor*], of &c., of the fourth part. WHEREAS, by a bond or obligation in writing, bearing date the —— day of ——, 17—, the said [*grantor*] became bound to the said [*grantee*], in the penal sum of —— thousand —— hundred pounds; *With a condition* thereunder written for making void the same on payment by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*] and his assigns, during his life, of *One* annuity or yearly sum of —— hundred pounds, free from all deductions, at the times and in manner therein mentioned: *And* at the foot of which said bond it was stated, that the said [*grantee*]

Parties.

Recital of bond for payment of annuity.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

had contracted and agreed with the said [*grantor*], for the purchase of the said annuity of —— hundred pounds for the sum of —— thousand —— hundred and —— pounds —— shillings and —— pence; the receipt and payment of which sum the said [*grantor*] did thereby acknowledge.

Recital of demise for better securing annuity.

And whereas, by indenture also bearing date the said —— day of ——, 17—, and made or expressed to be made between the said [*grantor*], of the one part, and the said [*grantee*], of the other part, *In consideration* of the said sum of —— thousand —— hundred and —— pounds —— shillings and —— *pence, so paid by the said [*grantee*], for the purchase of the said annuity of —— hundred pounds, and for better securing the due payment of the same annuity, the said [*grantor*] *did* grant, demise, set, and to farm let unto the said [*grantee*], *The* capital messuage, dwelling-house, cots, lands, farms, mill, toll-tin, and farm-tin, thereinafter particularly mentioned and described, and which had been usually granted, leased, or demised by deed or deeds, for lives or for years, determinable upon deaths, at the several ancient and accustomed yearly rents, heriots, and services thereinafter reserved, that is to say; *All that*, &c. (*Except*, &c.) *To hold* the same with the appurtenances, (*except* as therein and hereinbefore is mentioned to be excepted, and except the said tenement, lands, and hereditaments, called [H], then in the tenure and occupation of the said [*tenant*],) unto the said [*grantee*] and his assigns, from the day of the date thereof, for the term of (ninety-nine) years, If the said [*grantee*] should so long live; *And to hold* the same premises called [H] aforesaid, with the appurtenances (*except* as in the indenture now in recital and hereinbefore is mentioned to be excepted), unto the said [*grantee*] and his assigns, from and after the death of the said [*tenant*], for the term of (ninety-nine) years, if the said [*grantee*] should so long live: *Rendering* to the said [*grantor*], his heirs, and assigns, the several and respective rents, *and subject* to the several and respective heriots by the indenture now in recital particularly made payable and reserved. And whereas the said [*grantor*] did in —— Term, in the —— year of the reign of his present Majesty, (*or* his late Majesty King George the third) suffer a judgment by confession in an

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Parcels.

Habendum with exception.

Habendum of part excepted, in reversion after decease of tenant for life.

Reddendum.

Recital of confession of judgment.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

action of debt on bond, to be signed and entered up against him in the Court of Common Bench at Westminster, at the suit of the said [*grantee*], as by the record of the said judgment in the said court will more fully appear. AND WHEREAS, by divers conveyances, and assurances in the law, *All*, or the greater part of the manors, messuages, farms, &c. of the said [*grantor*], situate in the said counties of —— and ——, including the immediate reversion expectant on the determination of the said term of (ninety-nine) years, of and in the hereditaments and premises hereinafter assigned, or in*tended so to be, have been conveyed or otherwise assured by the said [*grantor*], *Unto*, and to the use of the said [*trustees for sale*], their heirs, and assigns, *Upon trust* for sale and other trusts, for the payment and liquidation of the debts of the said [*grantor*], and the redemption or repurchase of divers of the annuities granted by him. AND WHEREAS, the said judgment obtained by the said [*grantee*], as hereinbefore is mentioned, is an impediment to the completion of the sales of divers of the trust estates which have been sold, and of other estates intended to be offered for sale; AND the estates hereinafter mentioned being part of the estates comprised in the said indenture of demise hereinbefore recited, have also been sold, or are intended to be offered for sale, and have as to part of them been already contracted to be sold to divers purchasers, but by reason of the said indenture and demise thereof to the said [*grantee*], the sales thereof cannot be carried into effect. AND WHEREAS, at the instance of the said [*grantor* and *trustees for sale*], the said [*grantee*] hath agreed to assign the said judgment, and the benefit thereof, (except as hereinafter is mentioned) to the said [*trustee of judgment*], his executors, administrators, and assigns, Upon the trusts hereinafter declared of the same judgment; AND hath also agreed to assign the said capital messuage, &c., and several lands, &c., hereinafter mentioned, unto the said [*trustees for sale*], To the intent that the same may be merged in the freehold and inheritance of the same premises. NOW THIS INDENTURE WITNESSETH, that in consideration of ten shillings of lawful money of Great Britain, by each of them the said [*trustees for sale*] in hand well

Recital, that by divers conveyances, greater part of grantor's estates were conveyed to trustees, In trust by sale to liquidate debts and repurchase annuities.

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Recital that judgment is an impediment to sales;

And that part of lands demised to grantee are intended to be sold.

Recital of grantee's agreement to assign judgment as aftermentioned.

And to assign part of the lands demised to merge.

Testatum.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

and truly paid unto the said [*grantee*], at or before the sealing and delivery of these presents; The receipt whereof is hereby acknowledged, *He* the said [*grantee*], at the request and by the direction and appointment of the said [*grantor*], testified by his executing these presents, *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *Doth* bargain, sell, assign, transfer, and set over, unto the said [*trustees for sale*], their executors, administrators, and assigns, ALL THAT, &c. AND all the estate, right, title, interest, term and terms for years, property, claim, and demand whatsoever, of him the said *[*grantee*], of, in, to, or out of the hereditaments and premises hereby assigned, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances. [To(*a*) HAVE AND TO HOLD the said hereditaments and premises hereby assigned, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustees for sale*], their executors, administrators, and assigns, henceforth for and during all the residue and remainder now to come and unexpired of the said term of (ninety-nine) years, determinable as aforesaid;] *To the end and intent*, that the said term of (ninety-nine) years of and in the said messuage, &c. hereby assigned, or intended so to be, may be merged and extinguished in the freehold and inheritance of the same premises; FREED and absolutely discharged of and from the trusts and purposes declared thereof, in and by the said hereinbefore recited indenture of the —— day of ——, 18—; and from all claims and demands in respect thereof. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth covenant and declare to and with the said [*trustees for sale*], their executors, administrators, and assigns, by these presents, that he the

Assignment of part of lands demised, to merge in the inheritance.

All the estate.

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[*Habendum.*]

Covenant by annuitant against incumbrances.

Habendum informal in surrender, release of right, &c.

(*a*) An *habendum*, though a formal part of a conveyance, is rather an *informal*, than a formal part of a surrender, or of a release of right; so in the above case, though the word *surrender* is not used, yet as the trustees have the immediate reversion, expectant on the determination of the estate for years, that estate merges in the reversion, and the *habendum* is therefore useless; for, as there is no continuing estate, there is *not any estate to be held*. 3 Pres. Abs. 39.

said [*grantee*] hath not at any time heretofore made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby, or wherewith, or by reason or means whereof, the hereditaments and premises hereby assigned, or intended so to be, or the said term of (ninety-nine) years, determinable as aforesaid, therein, or any part thereof respectively, are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of ten shillings of like lawful money to the said *[*grantee*] in hand paid by the said [*trustee of judgment*] at or immediately before the sealing and delivery of these presents; The receipt whereof is hereby acknowledged; *He* the said [*grantee*], at the like request, direction, and appointment, and testified as aforesaid, *Hath* bargained, sold, assigned, transferred, and set over; AND by these presents *Doth* bargain, sell, assign, transfer, and set over unto the said [*trustee of judgment*], his executors, administrators, and assigns, ALL THAT the said judgment obtained by the said [*grantee*], or suffered by the said [*grantor*]; *And* the full benefit thereof; *and* of all liens created by the same judgment: AND all the right, title, and interest, claim and demand whatsoever of him the said [*grantee*], of, in, to, out of, and upon the same judgment, or by reason or in respect thereof (*Except* as hereinafter is excepted). TO HAVE, hold, receive, and take the said judgment, and the full benefit thereof, unto the said [*trustee of judgment*], his executors, administrators, and assigns, henceforth, as his and their own judgment, property, and effects; *With* full power and authority to and for the said [*trustee of judgment*], his executors, administrators, or assigns, to use the name or names, and act as the attorney or attornies of the said [*grantee*], his executors, or administrators, in enforcing and deriving the benefit of the same judgment, and of all executions which shall be sued thereupon, and of all estates which shall be created by such executions, and the writ of liberate (*b*) thereupon; *Nevertheless* UPON THE TRUSTS, and to and

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

Further *testatum*.

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Assignment of judgment.

And all the right, &c.

Habendum of judgment.

With power to sue in grantee's name.

(*b*) As to the writ of *liberate*, see 2 Tidd's Practice, 1116, 7th ed. Wms. n. 2 Saund. 70 c, 4th ed.

Liberate.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

Declaration of trust of judgment;

to protect all grantor's lands [*440]

(except premises not assigned by grantee),

and the purchasers thereof.

Subject thereto.

In trust for grantee.

Proviso that assignment is not to prevent annuitant from suing execution against residue of lands.

for the intents and purposes hereinafter expressed and declared of and concerning the same judgment. And *it is hereby directed, declared, and agreed*, by and between all the parties to these presents, so far as they are respectively interested, that the assignment of the said judgment and premises hereby made to the said [*trustee of judgment*], his executors, administrators, and assigns, is so made to him and them Upon trust that he or they do and shall stand and be possessed of and interested in and entitled to the said judgment, and the benefit thereof; *Upon trust*, that he or *they do and shall, as far as may be, and circumstances will permit, protect of and from the said judgment, and the lien thereof, and executions thereupon, *All* the manors, messuages, &c., now or late of the said [*grantor*], which are subject to the lien of the said judgment respectively; (*Other than and except* such of the said messuages, &c., hereinbefore mentioned, as were demised to the said [*grantee*] as aforesaid, and are not hereby assigned and merged, or intended so to be;) *And also* the purchasers and other owners for the time being of the same manors, &c. (except as aforesaid): And for that purpose do and shall stand and be possessed of the same judgment, and the benefit thereof, so far as the same relates to or concerns the same manors, &c. respectively (except as aforesaid), In trust for the purchaser or purchasers, and other owner or owners for the time being of the same manors, &c. respectively (except as aforesaid); *And subject thereto*, do and shall stand and be possessed of the said judgment and the benefit thereof; In trust for the said [*grantee*], his executors, administrators, and assigns. Provided always, and it is hereby declared and agreed by and between the said parties hereto, that nothing herein contained shall prevent or be construed to prevent, the said [*grantee*], his executors, administrators, or assigns, from enforcing the lien of the said judgment, or issuing an execution or executions thereon, against the lands, tenements, goods, and chattels of the said [*grantor*], *Save and except* his said lands and tenements in the said counties of —— and ——, which are not included in and demised by the said indenture of the —— day of —— 17—; *And also save and except* so much and such part of the said

lands, tenements, and hereditaments, included and comprised in the said lastly mentioned indenture, as is hereby assigned and merged, and intended so to be, with the appurtenances. And the said [*grantee*], doth hereby for himself, his heirs, executors, and administrators, covenant and agree with the said [*trustee of judgment*], his executors, administrators, and assigns, that he the said [*grantee*], his executors, or administrators, upon the request of the said [*trustee of judgment*], [*grantor*], [*trustees for sale*], or either of them, their, any, or either of their *heirs, executors, administrators, or assigns, shall and will, [*441] at the costs and charges of the person or persons requiring the same, make, do, and execute, or cause and procure to be made, done, and executed, all such further and other lawful and reasonable acts, deeds, assignments, powers, authorities, and other assurances whatsoever, for the further, better, more perfectly, lawfully, and absolutely or satisfactorily assigning or assuring unto or vesting in the said [*trustee of judgment*], his executors, administrators, or assigns, and empowering him or them to receive and obtain the said judgment hereby assigned, or intended so to be, and the full benefit thereof, (except as aforesaid), Upon the trusts, and for the ends, intents, and purposes, and under and subject to the declarations and agreements hereinbefore expressed and contained of and concerning the same; *As* by the said [*trustee of judgment*], his executors, administrators, or assigns, or the said [*grantor* and *trustees for sale*], or any or either of them, their, any, or either of their heirs or assigns, shall be reasonably devised or advised, and required, and tendered to be made, done, and executed. Provided always, that nothing in these presents contained shall be considered or taken to release, exonerate, or discharge the said hereditaments and premises comprised in and demised by the said indenture of the —— day of ——, 17—, (*except* such of the said hereditaments as are hereinbefore assigned or merged) of and from the said annuity or yearly sum of —— hundred pounds secured to the said [*grantee*] as aforesaid, nor to prejudice or affect any security which he now holds for the said annuity or yearly sum, besides the said judgment

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

Covenants by grantee for further assurance.

Proviso that assignment is not to release residue of lands from annuity, or to prejudice any other security.

ASSIGNMENT OF PART OF LANDS DEMISED, AND JUDGMENT.

expressed to be hereby assigned, so far as such security affects or concerns the same hereditaments and premises, (except as aforesaid) or any of them. IN WITNESS, &c.

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ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

ASSIGNMENT *of an* ANNUITY *granted, subject to repurchase, and a* BOND *and* TERM *of Years for securing the same, from a* SURVIVING JOINT GRANTEE, *and the Trustee of the Term, to a Purchaser and his Trustee;* FREED FROM *the Power to* REPURCHASE *by the Grantor, in Consideration of a further Sum: with special* RECITALS *as to Benefit of* SURVIVORSHIP *between the Grantees.*

Parties.

THIS INDENTURE, made the —— day of ——, in the year of our Lord 18—; BETWEEN [*surviving grantee*], of &c., of the first part; [*grantor*], of &c., of the second part; [*purchaser*], of &c., of the third part; [*old trustee of term*], of &c., of the fourth part; and [*new trustee of term*], of &c., of the fifth part. WHEREAS by indenture of —— bearing date the —— day of ——, in the year 17—, and made, or expressed to be made, between the said [*grantor*], of the first part; the said [*grantee*], and [*deceased grantee*], since deceased, of the second part; and the said [*old trustee*], of the third part; *It is witnessed,* that in consideration of the sum of —— pounds to the said [*grantor*] paid by the said [*grantees*], in equal proportions, being the same sum as was mentioned in the condition of the bond hereinafter mentioned, he the said [*grantor*], did give, grant, and confirm unto the said [*grantees*], their executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], *One* annuity, clear yearly rent-charge, or sum of —— pounds, to be issuing and payable, had, received, and

Recital of grant of annuity to two as joint tenants,

charged on leasehold premises.

taken by them the said [*grantees*], their executors, administra*tors, and assigns, out of *All those*, &c. *To hold* the same annuity, yearly rent-charge, or annual sum, unto the said [*grantees*], their executors, administrators, and assigns, for and during the natural life of him the said [*grantor*], payable half yearly, at or on the days and times, and in manner therein mentioned; *Together* with a proportionable part of such annuity, or yearly rent-charge, for the time which should elapse between the last of the said days of payment next preceding the decease of the said [*grantor*], and the time of such his decease: *With* the usual powers of distress and entry, and perception of the rents and profits for recovering and securing the same annuity as therein mentioned: *And* in which said indenture now in recital, is contained a covenant for procuring the renewal of the lease of the premises charged with the annuity, and which are held by lease granted by the Bishop of (London) for a term of (seven) years, subject to renewal; *and* that the lease when renewed should be chargeable with the annuity: And *it is by the now reciting indenture further witnessed*, that for the considerations aforesaid, and for the better securing the payment of the said annuity, yearly rent-charge, or sum of —— pounds, and also in consideration of ten shillings to the said [*grantor*], paid by the said [*old trustee*], he the said [*grantor*], *did*, at the nomination and by the direction and appointment of the said [*grantees*], testified as therein mentioned, grant, bargain, sell, and demise unto the said [*old trustee*], his executors, administrators, and assigns, *All those*, &c. *To hold* the same unto the said [*old trustee*], his executors, administrators, and assigns, from the day next before the day of the date of the now reciting indenture, for and during the term of (ninety-nine) years thence next ensuing, if he the said [*grantor*] should so long live; *Upon certain trusts* therein mentioned, for better securing the payment of the said annuity, yearly rent-charge, or sum of —— pounds, and the fines, fees, and expenses, which should from time to time be paid by the said [*grantees*], their executors, administrators, or assigns, for the renewal of the lease of the premises thereby demised, in the event of the said [*grantor*] refusing or

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Habendum for grantor's life.

Powers of distress and entry.

Covenant for renewal of lease.

Demise to trustee.

Parcels.

Habendum.

Upon trust to secure annuity, and fines, &c. for renewing lease.

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Power to repurchase.

neglecting to procure the same: AND *in and by the said reciting indenture it was provided, declared, and agreed,* *that in case the said [*grantor*] should at any time after the expiration of twelve months from the day of the date thereof, be minded or desirous to redeem or repurchase the said annuity, yearly rent-charge, or sum of —— pounds, it should be lawful for him the said [*grantor*] so to do, upon payment by him to the said [*grantees*], their executors, administrators, and assigns, of the sum of [*original purchase money, and half a year's annuity*], pounds, and of all sum and sums of money which should be due for or on account of the said annuity, yearly rent-charge, or sum of —— pounds, and the arrears thereof, and of all costs, charges, and expenses, which the said [*grantees*], their executors, administrators, or assigns, should have paid, or been put unto touching or concerning the same, or the non-payment thereof; *And* from and immediately after such payment being made to the said [*grantees*], their executors, administrators, or assigns, of the said sum of —— pounds, and the arrears of the said annuity, yearly rent-charge, or sum of —— pounds, and all such costs, charges, and expenses as aforesaid, but not otherwise, the said annuity, yearly rent-charge, or sum of —— pounds, should cease, determine, and be void and at an end. (*a*) AND

Recital that one grantee was dead, whereby annuity survived to other.

(*a*) If it were the case, say,

Recital of declaration of benefit of survivorship.

"AND *in and by the said reciting indenture it was provided, declared, and agreed,* that in case either of them the said [*grantees*], should depart this life during the continuance of the said annuity, yearly rent-charge, or sum of —— pounds, Then the same annuity, and the proportional part thereof, and the money to be paid for the repurchase thereof, (or so much thereof as should remain unpurchased) as aforesaid, should belong to and be the sole property of the survivor of them the said [*grantees*], his executors, administrators, and assigns."

Or, if it were the case, say,

Recital of declaration to rebut benefit of survivorship.

"AND *in and by the said reciting indenture it was provided, declared, and agreed,* that the said annuity, yearly rent-charge, or sum of —— pounds, and the propor-

WHEREAS * the said [*deceased grantee*], having lately departed this life, the said annuity, yearly rent-charge, or sum

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tional part thereof, and the money to be paid for the repurchase of the same annuity, (or so much thereof as * should remain unpurchased) as aforesaid, should, *As* to one equal half part thereof, belong to and be the sole property of the said [*grantee*], his executors, administrators, and assigns; *And* as to the other equal half part thereof, should belong to and be the sole property of the said [*deceased grantee*], his executors, administrators, and assigns; *And* that no benefit of survivorship should be had or taken by either of them the said [*grantees*], or by either of their executors, administrators, or assigns, in respect of the said annuity, and proportional part, and money to be paid for the repurchase of the same."

In the last mentioned case, the executors, &c. of the deceased grantee, will be necessary parties to an assignment of the annuity. *Vide ante*, p. 370, 373.

Right of survivorship on a joint purchase.

Where two or more *purchase* lands, and advance the money in equal proportions, and take a conveyance to them and their heirs, it is a joint-tenancy, that is, a purchase by them jointly of the chance of survivorship, which may happen to the one of them as well as to the other; but where the proportions of the money are not equal, and this appears in the deed itself, it makes them in the nature of partners; and however the legal estate may survive, yet the survivor shall be considered in equity but as a trustee for the others, in proportion to the sums advanced by each of them. *Lake* v. *Gibson*, 1 Eq. Ca. Abr. 291, pl. 3. *Jefferies* v. *Small*, 1 Vern. 217. *Lake* v. *Craddock*, 3 P. Wms. 158. Noy's Maxims, 78 (*c*), 9th ed. So, if two persons advance a sum of money, either in equal or unequal proportions, by way of mortgage, and take the mortgage to them jointly, and one of them dies; when the principal or interest is paid, the survivor is not, in equity, entitled to the whole, but the representative of him who is dead is entitled to his proportion. *Petty* v. *Styward*, 1 Ch. Rep. 58; 3 Atk. 734; 2 Ves. sen. 259; 5 Bac. Abr. 39, 46; 20 Vin. Abr. 147, (A), pl. 2. The consequence of which principle is, that in the absence of an express declaration in the mortgage deed, that the receipt of the survivor shall be a sufficient discharge †, the executors or administrators of a deceased joint mortgagee should, on assigning the mort-

No survivorship on a mortgage.

Therefore executor of deceased mortgagee should join in assignment of mortgage.

† See a clause of this nature, *ante*, p. 277.

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of —— pounds, is become legally and absolutely vested in the said [*surviving grantee*], by survivorship. AND WHEREAS the said annuity, yearly rent-charge, or sum of —— pounds, and all arrears thereof, up to the —— day of ——, last past, have been satisfied and paid, as the said [*grantee*] doth hereby admit and acknowledge. AND WHEREAS the said [*grantee*] hath, on the application of the said [*purchaser*], agreed, in consideration of the sum of —— pounds, to be by him paid to the said [*grantee*], to assign and transfer the said annuity, or yearly rent-charge, or sum of —— pounds, and the securities for the same, unto the said [*purchaser*], his executors, administrators, and assigns. AND WHEREAS the said [*grantor*], at the instance and request, and for the satisfaction of the said [*purchaser*], hath covenanted and agreed to ratify and confirm the assignment to be made to him by the said [*grantee*], of the said annuity, yearly rent-charge, or sum of —— pounds, freed and discharged of and from the power or proviso for redemption or repurchase thereof, in the said recited indenture contained, in consideration of the sum of —— pounds. NOW THIS INDENTURE WITNESSETH, that in pursuance and part performance of the said agreements, and in consideration of the sum of —— pounds of lawful money of Great Britain, to the said [*grantee*] in hand well and truly paid by the said [*purchaser*], at or before the sealing and delivery of these

That all arrears have been paid to a certain day.

That surviving grantee had agreed to assign.

And that grantor had agreed to ratify assignment, and free annuity from power to repurchase.

Assignment by grantee confirmed by grantor.

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gage, be parties, to direct the surviving mortgagee to convey; because the survivor is, in equity, a trustee for the representatives of the deceased mortgagee. 2 Pow. Mortg. 700, 4th ed.

Survivorship as to annuities.

There has not been any determination on this point as to the purchase of annuities; and therefore, it is only on the general principle of *purchases*, that it can be applicable to them. However, as the inequality of the proportions of the sum advanced by each of the grantees may be consistent with their presumed agreement for the benefit of survivorship, in consequence of the relative value of their lives; and as, on the other hand, the right of survivorship on an equal payment may, by their presumed agreement, be negatived in consequence of the relative value of their lives; on every joint-purchase, the intention of the parties on this point should be expressly declared, in order to avoid any question.

presents; *And* in consideration of the sum of —— pounds of like money to the said [*grantor*] in like manner paid by the said [*purchaser*], the receipt of which said several sums of —— pounds and —— pounds respectively, making together the sum of —— pounds, the *said [*grantee*] and [*grantor*] do hereby respectively acknowledge, and of and from the same and every part thereof respectively do hereby respectively acquit, release, and discharge the said [*purchaser*], his executors, administrators, and assigns, by these presents; he the said [*grantee*] *hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*], *hath* granted, ratified, and confirmed; *And* by these presents *doth* grant(*b*), ratify, and confirm unto the said [*purchaser*],

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(*b*) If a similar grant to the above be not within the 53 Geo. 3, cap. 141, sec. X. *ante*, p. 335, a memorial of this assignment should be enrolled, because the annuity being thereby freed from the power of repurchase, it operates as a new *grant* from the grantor. Withy, 453. Memorial.

By sec. 2, of the late annuity act, 17 Geo. 3, c. 26, which took effect, by relation, on the 31st day of October, 1776, it was enacted, "that before any judgment shall be entered of record upon any warrant of attorney, for recovering or securing the payment of any annuity or rent-charge, that hath already been *granted* for one or more life or lives, or for any term of years or greater estate, determinable upon one or more life or lives, and before any execution shall be sued out, or action brought on any such judgment already entered on any deed, bond, instrument, or other assurance, already executed for the purposes aforesaid, a like memorial of the deed, bond, instrument, or other assurance, shall be enrolled in the High Court of Chancery; and in case the party shall neglect to enrol the same, any such judgment, execution, or proceeding in the action respectively, shall be null and void." Before judgment be entered on warrant of attorney for securing annuity, granted before 17 Geo. 3, c. 26, a memorial must be enrolled of the securities.

Upon this clause it was decided in the Common Pleas, in *Grant* v. *Foley*, Trin. 23 Geo. 3, MSS. Hunt, 38, 2nd ed., that a memorial of a bond for securing an annuity, entered into before the passing of the act, was not sufficient, because it did not mention a warrant of attorney for confessing judgment, given at the same time, and also an assignment of the annuity which existed at the time of the enrolment of the bond; because, as Lord *Loughborough* said, the statute requires, that whenever any step is to be taken respecting an annuity *granted before the act passed*, an enrolment must be made, like to the memorial, which must be made on making a new grant, that is, the state of the Which must state any assignment previously made.

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his executors, administrators, and assigns, ALL THAT the said annuity, yearly rent-charge, or sum of —— pounds,

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parties as they are at the time of the enrolment. Perhaps it may be doubted whether the latter part of his Lordship's opinion is author-

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*ized by the act of parliament. But it is admitted by the judgment, that if the assignment had been made subsequently to the due enrolment of the original securities, a memorial of the assignment would have been unnecessary.

A memorial of an assignment of an annuity, granted since 17 Geo. 3, c. 26, need not be enrolled.

When it was stated, *ante*, p. 342, that a memorial of an assignment of an annuity need not be enrolled, it was thought unnecessary to mention, that a different opinion to a certain extent had been expressed; but upon consideration it seems proper to state what has been said on the subject: Mr. Hunt, in his collection of cases, &c. on the annuity act, says, " every deed of assignment of *any part* of an annuity already granted and enrolled, must be registered according to the requisites prescribed by this act, each assignment being in that respect considered as a fresh grant." *Duke of Bolton* v. *Williams*, 2 Ves. jun. 138; 4 Bro. Ch. Ca. 297, S. C. Hunt on Annuities, 36, 2nd ed. So, in a note by the reporter, 2 Hen. Blacks. 307, it is stated, " but if it had been assigned in *parts* to different persons, *it seems necessary*, from the case of the *Duke of Bolton* v. *Williams*, 4 Brown's Chan. Cas. 297, that each assignment should be registered." So also Mr. Blayney, in his treatise on annuities, page 44, says, " an assignment of *part* of an annuity must be memorialized; *Duke of Bolton* v. *Williams*, 4 Bro. Ch. Ca. 297; 2 Ves. jun. 138, S. C.; in order that it may appear by the register, who has the present subsisting right; such assignment being considered of the nature of a *fresh grant;* but an assignment of the *whole* property needs not the protection intended to be afforded by the statute, being sufficiently complied with by the enrolment of the original securities. *Dixon* v. *Birch*, 2 H. Blacks. 307."

Some persons have thought an assignment of part of an annuity ought to be enrolled;

Supposing a memorial of an assignment of *part* of an annuity to be necessary on the above principles, (but neither of the cases *cited* in the least degree authorizes any such conclusion), the same reasoning would equally apply to an assignment of the *whole* annuity: on the contrary, the cases which have decided it to be unnecessary to enrol a memorial of an assignment of the *whole* annuity, equally apply to an assignment of *part*.

but there is no authority for that opinion.

The question in the case of the *Duke of Bolton* v. *Williams*, was as to this point, simply, whether a *grant* of an annuity made after the passing of the annuity act, to be paid out of an annuity of a larger amount, payable to the grantor under a deed of trust or voluntary settlement, made eleven years before the annuity act passed, and within

in and by the said recited indenture granted and secured, and made payable unto the said [*grantees*], their execu-

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Annuity,

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the eighth section of that act, *ante*, p. 357, required enrolment? The counsel for the grantee having observed, "it is doubtful, whether the assignment of an annuity requires any memorial; though the Court of *Common Pleas did in a late case seem to think an assignment within the statute; Lord *Loughborough* observed: "It is very material for you to contend, if you can, that an assignment of an annuity is not to be registered. Is it not a deed, whereby an annuity is *granted* for one or more lives?" His Lordship clearly referred to the words of *grant* used in the assignment, as stated, 4 Bro. C. C. 309; 2 Ves. jun. 152; the question of an *assignment* or transfer either of an annuity or a *part* of an annuity, not being before the Court. The case, above referred to by the counsel, was *Grant* v. *Foley*, *ante*, p. 447.

However, the Court of King's Bench, in *Bromley* v. *Greathead*, Hil. 34 Geo. 3, MSS. Hunt, 45, intimated a very clear opinion, that there was no necessity for an assignee of an annuity, which was properly enrolled when it was first granted, to enrol a memorial of the assignment before he proceeds against the grantor; and Lord *Kenyon*, C. J., upon granting the rule, said, he thought neither the words nor the spirit of the act required it.

So, in the case of *Dixon* v. *Birch* and *Tyte*, 2 Hen. Blacks. 307, where a rule was granted to shew cause, why an indenture, bond, and warrant of attorney, entered into to secure an annuity, should not be given up to be cancelled, and the money levied under an execution staid in the hands of the sheriff. The facts were simply these: Birch granted the annuity to Dixon, Tyte joining as a security; Dixon assigned the whole of it to Cousins, and the execution issued in the name of Dixon: there was a memorial of the original indenture, bond, and warrant, but none of the assignment from Dixon to Cousins, on the omission of which the application to the Court was founded. But after argument, the Court held, that as there was a memorial of the original securities enrolled, the object of the statute 17 Geo. 3, c. 26, which was the protection of the grantor, was fully complied with, and it was not necessary to enrol the assignment. Rule discharged.

The principle of this decision has been so far extended, that where an annuity bond was assigned to secure another annuity of less amount; the Court of Common Pleas held that the second annuitant was not bound to enrol a memorial of the first bond. *Henderson* v. *Glencairn*, 2 Taunt. 235. The enrolment must be, under the old act, within twenty days after the execution of the instrument; how then can the assignee, taking an annuity in 1803, enrol, within twenty days after the execution, a bond given in 1781?

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tors, administrators, and assigns, as therein and hereinafter mentioned; *And* all arrears now due thereon; *Together* with the same indenture; *And* all and every the trusts, powers, remedies, covenants, and agreements, therein mentioned and contained, and thereby created and entered into for securing and enforcing the payment thereof: *And* all the right, title, interest, trust, property, possession, claim, and demand whatsoever, both at law and in equity, of them the said [*grantee*] and [*grantor*], or either of them, of, in, to, or out of the same, and every or any part thereof; To HAVE, hold, receive, take, and enjoy the said annuity, yearly rent-charge, or sum of —— pounds hereinbefore mentioned to be assigned and confirmed unto the said [*purchaser*], his executors, administrators, and assigns, from the —— day of —— now last past, for and during the natural life of the said [*grantor*], *Freed* and absolutely discharged of and from the power or proviso in the said recited indenture contained for redemption or repurchase thereof. AND THIS INDENTURE FURTHER WITNESSETH, that for the considerations hereinbefore expressed, the said [*grantee*] *Hath* bargained, sold, assigned, transferred, and set over; *And* by these presents *Doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] *hath* ratified and confirmed; *And* by these presents *doth* ratify and confirm unto the said [*purchaser*],

arrears,

indenture,

trusts, powers, &c.

All right, &c.

Habendum of annuity.

Freed from repurchase.

Assignment of bond.

Assignment of dividends on stock requires enrolment, when.

[Where a person, entitled to dividends on stock in the funds for his or her life, sells and assigns the whole, or a part of those dividends, for a pecuniary consideration, such a grant is not within the act, and does not require enrolment; *Browne* v. *Like*, 14 Ves. 302. But, *contra*, where the sale is not of a specific portion of such dividends, but of an annuity out of them. In a late case, A., entitled for life to the dividends on 18,000*l.* Three *per cent.* Consols, by indenture, in consideration of 1,100*l.* assigned to B. 150*l.*, part thereof; providing, however, that, as there would be only one month's interest due in July next, when the next half yearly dividend would become payable, (the deed being entered in June), B. should receive 12*l.* 10*s.* only of that dividend: Sir *J. Leach*, V. C., thought, that this conclusively shewed that it was not, as it purported to be, a sale of a proportion of the dividends, but a grant of an annual sum charged on this fund, and, therefore, required enrolment; *Charretie* v. *Vause*, 1 Simons, 153; see also *Hood* v. *Burlton*, 2 Ves. jun. 138.]

his executors, administrators, and assigns, *All that* the said bond or obligation made and entered into by the said [*grantor*] unto the said [*grantees*], in the penal sum of —— hundred pounds, for better securing to them the payment of the said annuity, or yearly sum of —— pounds, hereby assigned and confirmed, or intended so to be, and all and every other sum and sums of money thereby secured, or thereupon recoverable; *And* *all other the benefit and advantage thereof; *Together* with full power and authority for him the said [*purchaser*], his executors, administrators, and assigns, in the name or names of the said [*grantee*], his executors, or administrators, to receive and recover the same. To HAVE, hold, receive, take, and enjoy the said bond and premises lastly hereinbefore mentioned to be hereby assigned and confirmed unto the said [*purchaser*], his executors, administrators, and assigns, to and for his and their own use and benefit. AND THE SAID [*grantee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*purchaser*], his executors, administrators, and assigns, by these presents, That he the said [*grantee*] hath not at any time heretofore, nor hath the said [*deceased grantee*] made, done, executed, committed, or knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the said annuity, or yearly sum of —— pounds, monies, securities, powers, and premises hereby assigned and confirmed, or intended so to be respectively, or any of them, or any part thereof, are, is, can, shall, or may be received, released, vacated, avoided, compounded, discharged, impeached, incumbered, or in any way affected. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, and of ten shillings of lawful money of Great Britain to the said [*old trustee*] in hand paid by the said [*new trustee*], at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*old trustee*], at the request and by the direction of the said [*grantee*], and at the nomination and appointment of the said [*purchaser*], respectively testified by their severally being parties to and executing these presents, *hath* bargained, sold, assigned, transferred, and set over, *And*

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Covenant that surviving and deceased grantee have done no act to incumber.

Assignment of premises for the residue of term to a trustee for assignee.

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by these presents *doth* bargain, sell, assign, transfer, and set over; *And* the said [*grantor*] and [*grantee*], at the like nomination and appointment of the said [*purchaser*], *have*, and each of them *hath* granted, ratified, and confirmed, *And* by these presents *do*, and each of them

[*452] **doth* grant(*c*), ratify, and confirm unto the said [*new*

The word "*grant*," may operate as a grant, feoffment, gift, lease, release, confirmation, surrender, or covenant to stand seised.

(*c*) The word "*grant*," being of general extent, may amount to a grant, feoffment, gift, lease, release, confirmation, or surrender; Litt. s. 531; Co. Litt. 301 b. 302 a; *Chester* v. *Willan*, 2 Saund. 96 a; and the person to whom it is made may plead or use it for whichever of these purposes he pleases. Co. Litt. 301 b; 4 Cru. Dig. 301, 2nd. ed. The chief intent of the parties is *to pass* the estate, and *the manner* of doing it ought to be subservient to the end: and though the intent of the grantor is to be regarded *as to what kind of estate* is to pass, *and to whom*, yet his intent is not to be regarded as to the *manner* of passing the estate, of which he is supposed to be ignorant: for it is an established rule, that a deed shall never be void, if by any construction it can be made good. *Earl of Clanrickard's* case, Hob. 277; Shep. Touchstone, 82, 83.

A conveyance in the form of, and void as a grant, feoffment, release, bargain and sale, or surrender, may still take effect as a covenant to stand seised.

Therefore, where a man seised in fee of a rent, granted it by deed to one who was his kinsman, and there was an attornment to the grant, but it being made by a person who was not the real tenant of the land, it was, in consequence, void; though the intent appeared that the deed *should operate as a grant at common law with an attornment*, yet as the rent could not pass that way, it was adjudged that the grant being made to a relation, *should operate as a covenant to stand seised*. *Saunders* v. *Saville*, cited in 3 Lev. 372. So, where a man by deed *gives and grants* land to another, and a letter of attorney to make livery is indorsed upon the deed, but no livery happens to be made; yet if this grant be to a relation, *it will operate as a covenant to stand seised;* although the letter of attorney, indorsed on the deed for making livery, shews the plain intent of the deed and of the parties to have been, that the land should pass by feoffment and livery. *Osman* v. *Sheaf*, 3 Lev. 372; *S. C.* Carth. 307. And where a father, seised of lands in fee, made a deed to his daughter, which was enrolled within six months, expressed to be "in consideration of natural love, augmentation of her portion, and the preferment of her in marriage, and other good and valuable considerations," he "gave, granted, bargained, sold, aliened, enfeoffed, and confirmed" unto the daughter and her heirs, the said lands, and there was a covenant in the deed for peaceable enjoyment, and a clause of warranty, and the deed was enrolled within six months, but there was no other consideration than what was expressed in the deed; it was held, that though the deed could not enure as a *bargain and sale*, no

[*453] money having passed between them, yet it should operate *as *a covenant*

trustee], his executors, administrators, and assigns; ALL THOSE, &c., in and by the said recited indenture demised

ASSIGNMENT OF ANNUITY, BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

Parcels.

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to stand seised. *Crossing* v. *Scudamore*, 2 Vent. 137; 1 Mod. 175. 179. And where a father, seised in fee of a rent, by indenture, in consideration of affection, and five pounds paid, gave, granted, assigned, and transferred the rent to his son and his heirs; it was held, that there being two considerations expressed, affection and money, the deed might operate as a bargain and sale, if enrolled, or as a covenant to stand seised, if not enrolled. *Baker* v. *Slade*, 3 Lev. 291; *S. C.* 4 Mod. 150; *Watts* v. *Dixey*, Sty. 204; *Bedell*'s case, 7 Rep. 40 b; *Tebbe* v. *Popplethwayte*, 2 Roll. Abr. 786, (O) pl. 1. So where the immediate freehold of lands is granted to a man and his heirs, with a general warranty against all persons whatsoever, and no livery, or a void livery, is made; still if this grant be made to a relation, it shall operate *as a covenant to stand seised;* though the inserting of the warranty shews the intent to have been, that the lands should pass by way of *feoffment;* in which case the feoffee, if impleaded, might vouch upon the warranty: whereas it operating by way of use, as a covenant to stand seised, the grantee is in the *post*, and cannot vouch the grantor to warranty. *Tomlinson* v. *Dighton*, *arg.* 1 P. Wms. 163. And where G. S. being seised in fee by indenture between him of the first part; A. S. of the second part; and W. S. of the third part; in consideration of a marriage then intended to be had between him and A. S., and for a competent jointure for A. S., and for a maintenance and provision for her during her life, if she should survive G. S., and for divers other good causes and considerations, gave, granted, released, enfeoffed, conveyed, and confirmed to A. S. and W. S., and their assigns, the premises in question, then in G. S.'s possession, *to hold* to the use and behoof of A. S. and her assigns for life, for and in full recompence and satisfaction of the dower which she, by reason of the said marriage, might claim; and after the decease of both G. and A., then to the heirs of the body of A. begotten by G., and in default of such issue, to the use of the right [so in the original, which was full of blunders] of the said G. S. for ever. In the deed were contained covenants by G. S., that he was seised in fee, and had right to convey; "that the said premises should remain and continue unto the uses, intents, and purposes aforesaid," clear of all incumbrances, and for further assurance, as W. S. or his heirs should require. The marriage took effect, and G. and A. S. died, leaving an only child, the lessor of the plaintiff. About five years after executing the above deed, G. S. became a bankrupt, and his assignees conceiving the deed to be void in law, or if it was not void, that G. S. was seised in tail by it, for a valuable consideration, conveyed the premises in question to one under whom the de*fendants claimed. *Doe* v. [*454]

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

unto the said [*old trustee*], his executors, administrators, and assigns, for the term of ninety-nine years, determin-

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Salkeld, Willes, 674, incorrectly stated by Serj. Wms. and in 4 Cru. Dig. 134, 2nd ed. It was resolved by the whole Court, that the deed could not operate as a bargain and sale, because there was no pecuniary consideration paid; nor as a release, because there was no lease for a year; nor as a deed of confirmation, because the grantees were neither of them in possession; nor as feoffment, because there was no livery of seisin; and though it seemed to be the intent of the parties, that the deed should operate as a common law conveyance, [*sed qu.* this is not stated in *Willes*, and there is no reason for saying it] yet it was resolved by the whole Court, that *it should operate as a covenant to stand seised*, whereby an estate in special tail was clearly in A. S.; and that G. S. had only an estate for life by implication, with a reversion in fee. The statement of this case in 2 Wils. 22, by the name of *Doe* v. *Assignees of Simpson*, is a bad report. So in the case of *Roe* v. *Tranmarr*, Willes's Rep. 682; *S. C.* 2 Wils. 75; where T. K. being seised in fee of certain premises, by lease and release, in consideration of natural love to his brother C. K. and of 100*l. granted*, released, and confirmed to the said C. K. the said premises, *after the death* of him the said T. K., *to hold* to the said C. K. and the heirs of his body, and after their decease to J. W., eldest son of his the grantor's well beloved uncle J. W., and his heirs and assigns, and to the only proper use of the said J. W. the younger, his executors, administrators or assigns, for ever; the said J. W. the younger, paying to the child or children of his the grantor's brother S. K. 200*l.*, and for want of such children, to other nephews and nieces therein mentioned; and for want of such children the estate was to be free from the payment of the sum of 200*l.*: the release contained covenants from the grantor, that he was seised in fee; and that it should be lawful for C. K. or J. W. the younger, after his the grantor's death, peaceably and quietly to hold, &c. and it was thereby covenanted, *granted*, and agreed by and between the said parties, that all fines, recoveries, and other assurances of the said premises already levied, suffered, and executed by and between the said parties, should enure to and for the only use and behoof of C. K., and the heirs of his body; and for want of such issue, to the use of J. W. the younger, his heirs and assigns for ever. At the time of executing the deeds C. K. paid 20*l.* part of the consideration, in money, and gave his note for the remainder; and a receipt was signed by T. K. for the whole sum. T. K. continued seised until his death. C. K. died without issue. It was unanimously resolved, that though the deed would not operate as a release, because it granted a free-

[*455] hold [to commence] in future, *which cannot by [the rules of the common] law be done, yet the deed of release operated *as a covenant to stand seised*

able on the decease of the said [*grantor*], as therein and hereinbefore mentioned, with the appurtenances: And all

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to the use of J. W.: that all the particular rules, which had been laid down with respect to covenants to stand seised, concurred in that case; of which the Lord Chief Justice said, he knew of no other but these: 1. A deed. 2. Words sufficient to make a covenant: there being the word *grant*, that alone would have been sufficient, according to all the cases, if there were no other word; but the grantor likewise expressly covenanted in two places in the deed, that the estate should go to J. W. in such manner as he had granted it. 3. The grantor was actually seised at the time of the grant. 4. The intent of the grantor was plain, that J. W. should have the estate after the death of C. K. without issue, for it is so said in express words in three places in the deed: and lastly, there was a proper consideration to raise the use; for J. W. is called in the deed, eldest son *of his well beloved uncle* J. W.; and indeed if it were not so *said* in the deed, his relation to the grantor might be averred and proved, according to the case of *Goodtitle* v. *Petto*, 2 Str. 934-5, and several cases there cited out of Lord Coke's Reports, S. P.; *Filmer* v. *Gott*, 7 Bro. Parl. Cas. 70; *Rex* v. *Inhabitants of Scammonden*, 3 Term Rep, 474; and the Court seemed to doubt the authority of *Hore* v. *Dix*, 1 Sid. 25; and *Samon* v. *Jones*, 2 Vent. 318; which are in truth overruled by this case. And on the authority of *Roe* v. *Tranmarr*, it was held in *Doe* v. *Whittingham*, 4 Taunt. 20, that a deed which may take effect, as a covenant to stand seised, is good, though the use is to arise after the decease of the covenantor, and though he does not affect thereby to dispose of the freehold in the mean time: and although the use is to arise after the decease of the covenantor and his wife, which may not happen till long after the covenantor's death, the estate, in the mean time, remaining in the covenantor or his heir. So, where an estate was limited to A. for life, remainder to B. for life, remainder to C. the eldest son of A. in fee; and A. in the lifetime of B., in consideration of an annuity of fourteen pounds to be paid to him by C. out of the premises, and for other considerations, did by deed give, grant, surrender, and confirm unto C. and his heirs the said premises; it was held, that though the deed could not operate as a *surrender*, according to the intent of the parties, upon account of B.'s intermediate estate for life, yet there being a consideration of blood between father and son, the conveyance should operate *as a covenant to stand seised; Doe* dem. *Wolley* v. *Pickard, per* Lord *Kenyon*, Stafford Summer Assizes, 1797; Wms. n. 1 Saund. 236 c; but it must be *pleaded* as a covenant to stand seised, and not as a *surrender*. *Barker* v. *Lade*, 4 Mod. 150. A similar circumstance occasionally occurs in practice; and the validity of many titles depends on this construction. 2 Sand. Uses, 79, 3rd ed.; Butler's n. Co. Litt. 337 b, (2). See further, *Sleigh* v.

All the estate

If relationship is not mentioned in a covenant to stand seised, it may be averred and proved.

Particular rules as to covenants to stand seised.

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

the estate, right, title, interest, trust, property, possession, claim, and demand whatsoever, at law and in equity, of

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Metham, 1 Lutw. 789; *Scudamore* v. *Crossing*, 1 Mod. 175, 176; *S. C.* 2 Lev. 9; *Walker* v. *Hall*, *Ibid.* 213; *Harrison* v. *Austin*, Carth. 38, 39; *Rigden* v. *Vallier*, 2 Ves. sen. 252; *Goodtitle* v. *Bailey*, Cowp. 599, 600.

[*456] Upon these cases, it may be observed, (in the language of Mr. Serjeant *Leving*), "that the judges of late times, have had a greater consi*deration for the *passing* of the estate, which is the *substance* of the deed, than the *manner how*, which is the *shadow*. *Osman* v. *Sheafe*, 3 Lev. 372; Wms. n. 2 Saund. 96 a, (1); *Tomlinson* v. *Dighton*, *arg.* 1 P. Wms. 163; *et vide* Sugd. Gilb. Uses, 109. 245. 251.

Every conveyance must be *pleaded* according to its operation in law, and not according to the words of the deed.

But the Chief Justice said in the above case of *Chester* v. *Willan*, 2 Saund. 96 a, that if the party in pleading had *pleaded* that he granted, the plea would be bad, for every one must order his plea according to the rules of law; but it is otherwise of a *verdict*, because it is the saying of laymen. So in *Monnington* v. *William*, 1 Vent. 109, it was said by Justice *Twysden*, that where a man in pleading sets forth his title by conveyance, in which are the words give, grant, release, confirm, bargain, sell, &c. he must express to which of them he will use it. S. P. Co. Litt. 301 b. And in *Osmere* v. *Sheafe*, Carth. 308, where the court being of opinion that the grant of a rent by deed under the circumstances operated as a covenant to stand seised, said, that the defendant had done well in *pleading* it as a conveyance by way of *covenant to stand seised;* for if he had pleaded it as *a grant of the rent*, it would have been void. So, where in replevin, the defendant avowed for rent, and pleaded a grant of a rent-charge to another, and brought it down by several mesne conveyances to the father of the defendant in fee, and that the father being so seised, by indenture, in consideration of natural love and affection to his son the defendant, and of five pounds paid by him, gave, granted, assigned, and transferred the rent to the defendant in fee, "which said grant, there being no attornment or other execution had thereon, except only the sealing and delivery of the deed, operated by way of covenant to stand seised to the use of the defendant; whereby and by force of the statute for transferring uses into possession," the defendant was seised, and avowed for so much rent in arrear: upon which the plaintiff demurred; and it was resolved by the whole Court, that pleading that "no attornment, or any other execution had thereon," and so pleading the special matter, and leaving the determination of the law to the Court, was impertinent and idle. 2. It was resolved by the Justices *Powell*, *Rokesby*, and *Ventris*, that pleading in the words of the deed, "that he gave, granted," &c. was sufficient, and the Court would construe them according to their legal operation: but they agreed that the defendant might have pleaded this con-

them the said [*old trustee*], [*grantor*], and [*grantee*], and of each and every of them, of, in, to, or out of the same, and every, or any part thereof. To HAVE AND TO HOLD the said premises hereinbefore mentioned to be hereby assigned and confirmed unto the said [*new trustee*], his executors, administrators, and assigns, henceforth for and during all the residue and remainder of the said term of ninety-nine years thereof, granted as aforesaid, yet to come and unexpired, if the said [*grantor*] should so long live; AT AND UNDER the rent by the said recited indenture reserved; AND UPON THE TRUSTS, and to and for the intents and purposes therein declared and hereinbefore mentioned; BUT *so nevertheless*, that all the benefit and advantage of the trusts by the same indenture declared, or intended in favour of the said [*grantees*], their executors, administrators, and assigns, shall belong to and be received and enjoyed by the said [*purchaser*], his *executors, administrators, and assigns. AND THE SAID [*old trustee*], for himself, his heirs, executors, and administrators, doth covenant and declare with and to the said [*new trustee*], his executors, administrators, and assigns, that he the said [*old trustee*] hath not made, done, executed, or committed, or

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Habendum.

Subject to rent;

Upon trust for purchaser.

[*458]

Covenant by trustee, that he has not incumbered.

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veyance *as a covenant to stand seised* of the rent to him and his heirs, which they said, would have been more neat pleading: Chief Justice *Pollexfen*, however, held the contrary, and that pleading in the words of the deed was altogether bad, and the defendant ought to have pleaded it at his peril, according as he intended to use it, namely, that his father *covenanted to stand seised to the defendant and his heirs;* and he resembled it to the case where the words "give, grant, release, and confirm," are in a deed, the party who pleads it must rely upon one of them only; and because it was not so done in this case, he was of opinion that judgment ought to be given for the defendant; upon which a writ of error was brought in the K. B. and the judgment was reversed for that cause only, in not pleading according to what *Pollexfen* had held; *Baker* v. *Lade*, 3 Lev. 291; *S. C.*, 4 Mod. 149; Carth. 253; Skin. 315; 2 Vent. 149; *Chaloner* v. *Davis*, 1 Lutw. 570; see Com. Dig. *Pleader*. (C. 37.) And if the deed be by the words "*dedi et concessi*, &c." yet if it operates as a bargain and sale, it ought to be so pleaded. *Taylor* v. *Vale*, Cro. Eliz. 166; see also *Chaloner* v. *Davis*, 1 Ld. Raym. 403, 404; Wms. n. 2 Saund. 97 b. (2)—As to the supposed warranty, arising on the word "grant," *vide ante*, p. 424.

ASSIGNMENT OF ANNUITY BY SURVIVING GRANTEE, FREED FROM REPURCHASE BY GRANTOR.

knowingly or willingly suffered any act, deed, matter, or thing whatsoever, whereby or wherewith, or by reason or means whereof, the premises lastly hereinbefore mentioned to be hereby assigned and confirmed, or the said term of ninety-nine years therein, or any part thereof, respectively are, is, can, shall, or may be impeached, charged, incumbered, or in any way affected. IN WITNESS, &c.

[459]

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

BOND *for securing an* ANNUITY, *for the* GRANTOR'S LIFE; *without any other Security; either where it is, or where it is not,* REPURCHASABLE.

Obligation, from one to one.

KNOW ALL MEN *by these presents,* that I [*obligor,* of ——, in the county of ——, am held and firmly bound to [*obligee*], of ——, in the county of ——, [*yeoman*], in the sum of [*double the purchase money*], of lawful money of Great Britain; to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns: *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents; *Sealed* with my seal: DATED this —— day of ——, in the [—— year of the reign of our sovereign lord *George* the *fourth,* by the grace of God of the United Kingdom of Great Britain and Ireland king, defender of the faith; and in the] year of our Lord one thousand eight hundred and ——.

Recital of contract for purchase.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*], for the purchase of one annuity or yearly sum of —— hundred pounds of lawful money of Great Britain, to be paid to the said [*obligee*], his executors, administrators, and assigns,

free from taxes, and clear of all other deductions whatsoever, for and during the natural life of the said [*obligor*], at or for the price or sum of —— thousand pounds; AND which said sum of —— thousand pounds the said *[*obligee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*obligor*] [(*a*) in notes of the Governor and Company of the Bank of England, payable to bearer on demand;] which he the said [*obligor*] doth hereby admit and acknowledge. [AND *WHEREAS at the time of the contract for the purchase of the said annuity, it was agreed that the costs and charges of procuring the said sum of —— thousand pounds, upon the said annuity, and of preparing and perfecting the securities for the same, should be borne and paid by the said [*obligor*].]

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

Recital of payment.

[*460]

Recital that grantor was to pay expenses.

[*461]

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural life of him the said [*obligor*] *One* annuity or yearly sum of —— hundred pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, (that is to say) on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*obligor*], should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— hundred pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum shall

Condition, payment of annuity,

and proportional part.

(*a*) It is not necessary that this should be stated in the bond or other assurance, although the manner in which the consideration is paid must be stated in the memorial. *Vide ante*, p. 331.

Mode of paying consideration need not be stated in the bond, &c.

BOND ONLY, FOR GRANTOR'S LIFE, REPURCHASABLE.

have become due, Then a proportional part of the quarterly payment of the said annuity or yearly sum of —— hundred pounds, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the *said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of —— hundred pounds should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— hundred pounds, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease; *Then* the above-written bond or obligation shall be void and of no effect, otherwise shall be and remain in full force and virtue (*c*).

[*162]

SEALED AND DELIVERED in the presence of }

ANNUITY REPURCHASABLE. Declaration enabling grantor to repurchase, on giving six months' notice, and repaying original purchase money, and half a year's annuity in advance.

(*c*) If the annuity be repurchasable, add,

"AND if the said [*obligor*] should at any time (after the expiration of three years from the date of the above-written bond or obligation), give unto the said [*obligee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, of his intention to repurchase the said annuity or yearly sum of —— hundred pounds; and should at the end of the said six calendar months from the time such notice shall be given as aforesaid, pay unto the said [*obligee*], his executors, administrators, or assigns, all and every sum and sums of money whatsoever that shall then be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to the day of repurchasing the same as aforesaid; and also the sum of —— thousand and —— pounds, being the original purchase-money of the said annuity, and half of a year's annuity in advance, as and in full for the repurchase of the said annuity or yearly sum of —— hundred pounds above secured †; *Then* and in such case the

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[† The terms upon which an annuity should be allowed to be redeem-

BOND *for securing an* ANNUITY *for the* GRANTEE'S *Life; either without any other Security, or with a* WARRANT OF ATTORNEY *to confess Judgment on the Bond; and either where the Annuity is, or where it is not* REPURCHASABLE.

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

KNOW ALL MEN *by these presents*, That I [*grantor*], of &c., (*common Form of Obligation, from one to one, ut ante*, p. 459). Obligation.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*] for the purchase of one annuity or yearly sum of —— pounds of lawful money of Great Britain, to be paid to the said [*obligee*], free from taxes and clear of all other deductions whatsoever, for and during the natural life of the said [*obligor*], at or for the price or sum of —— pounds; and Recital of contract for purchase.

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said annuity or yearly sum of —— hundred pounds shall cease and determine, and be no longer paid or payable, and the above written bond or obligation shall be void and of no effect."

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ed, depend of course upon agreement; and strictly speaking, a grantee has no right to complain of this more than any other term of the contract: but it may be observed, that if a sum of money is to be paid in addition to the original purchase-money as the price of redemption, (and some addition may fairly be asked, as a compensation for the loss of interest which the grantee may sustain before the money is again invested); a long notice ought not to be required, such notice being often very inconvenient to the grantor, and of not much advantage to the grantee, as the latter cannot calculate with certainty on the money being forthcoming at the time. To make the annuity redeemable after a given period, on seven days' notice and one quarter's payment in addition to the original purchase-money, seems to be a fair stipulation.]

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

which said sum of —— pounds, the said [*obligee*] hath on the day of the date of the above-written bond or obligation paid to the said [*obligor*]; which he the said [*obligor*] doth hereby admit and acknowledge. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, it was agreed that the same should be secured by the bond or obligation of the said [*obligor*] (*a*). [(*b*) AND WHEREAS at the time *of the contract for the purchase of the said annuity, it was agreed that the costs and charges of procuring the said sum of —— pounds upon the said annuity, and of preparing and perfecting the securities for the same, should be borne and paid by the said [*obligor*].]

Recital of paying consideration money.

To be secured by bond.

Recital of agreement, that obligor was to pay charges.

[*464]

Condition, for

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*] or his assigns, for and during the natural life of him the said [*obligee*], *One* annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year (that is to say), on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], in case the said [*obligee*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly

payment of annuity for obligee's life,

with proportional part to his death.

WARRANT OF ATTORNEY.

(*a*) If there be a warrant of attorney to confess judgment, add,

"and by his warrant of attorney to confess a judgment thereon."

(*b*) *Vide ante*, p. 460, n. (*b*).

payment of the said annuity or yearly sum of —— pounds shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the said [*obligee*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds shall have become due at the time of the decease of the said [*obligee*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— pounds, as shall happen to be next and immediately preceding the day of the death of the said [*obligee*] to the *day of his decease; *Then* the above-written bond or obligation shall be void and of no effect, otherwise shall be and remain in full force and virtue (*c*).

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

[*465]

(*c*) If the annuity be repurchasable, add,

REPURCHASABLE.

Clause of repurchase in a bond for securing an annuity for the grantee's life.

"AND if the said [*obligor*], his heirs, executors, administrators, or assigns, should at any time (after the —— day of ——, in the year one thousand eight hundred and ——) be desirous of repurchasing the said annuity of —— pounds, and should give to the said [*obligee*], or his assigns, —— calendar months' notice in writing of such his or their desire; and upon the expiration of the said notice, or at any time afterwards, and upon giving —— calendar months' such notice as aforesaid, should well and truly pay, or cause to be paid unto the said [*obligee*], or his assigns, the sum of —— pounds, and also all and every sum and sums of money which shall be then due and owing to the said [*obligee*], or his assigns, for or on account of the said annuity of —— pounds, and also a proportional part of the same annuity up to and inclusive of the day or time of paying the said sum of —— pounds, *Then*, and in such case, the said [*obligee*], or his assigns, shall and will deliver the above-written bond or obligation to the said [*obligor*], his heirs, executors, administrators, or assigns, cancelled, or to be cancelled and destroyed (*d*);

(*d*) If there be a warrant of attorney, add,

WARRANT OF ATTORNEY.

"and acknowledge satisfaction on the record of the judgment to be entered up by virtue of the said warrant of attorney;"

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR GRANTEE'S LIFE.

or otherwise assign the same (*e*) in such manner as the said [*obligor*], his heirs, executors, administrators, or assigns, shall direct or appoint."

(*e*) respectively."

[466]

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

BOND *for securing an* ANNUITY *for the Lives of* NOMINEES, *and the Lives and Life of the Survivors and Survivor of them; either without any other Security, or with a* WARRANT OF ATTORNEY *to confess Judgment on the Bond; and either repurchasable by one Payment, or* REPURCHASABLE BY INSTALMENTS, *not being less at any one Time than a certain Part of the Annuity.*

Obligation.

KNOW ALL MEN *by these presents*, That I, [*grantor*], of &c., (*common form of obligation from one to one, ut ante*, p. 459).

Recital of contract for purchasing annuity.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*], for the purchase of one annuity, or yearly sum of —— pounds of lawful money of Great Britain, to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of [*nominees*], of &c., and the (lives and) life of the (survivors and) survivor of them, at or for the price or sum of —— pounds.

To be secured by obligor's bond (and warrant of attorney), at obligor's expense.

AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, it was agreed that the same should be secured by the bond or obligation of the said [*obligor*] (and by his warrant of attorney to confess a judgment thereon in his Majesty's Court of King's Bench, at Westminster). [(*a*) AND WHEREAS upon the treaty for

(*a*) *Vide ante*, p. 460, n. (*b*).

the purchase of the said annuity or *yearly sum of —— pounds, it was likewise agreed, that all costs, charges, and expenses attending the said contract, and for preparing and perfecting the several securities for the same annuity, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS the said [*obligee*] hath, on the day of the date of the above-written bond or obligation, [in (*b*) his own proper person], paid to the said [*obligor*] [in (*c*) his own proper person], the said sum of —— pounds, which he the said [*obligor*] doth hereby admit and acknowledge; [out (*d*) of which said sum of —— pounds, the said [*obligor*], immediately after receiving the same, paid to [*solicitor*], of &c., the sum of —— pounds, for attendances respecting the granting of the said annuity, and for preparing and perfecting the several securities for the same, and preparing and enrolling a memorial thereof.]

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

And payment of consideration money.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors or administrators, should well and truly pay, or cause to be paid, unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural lives of the said [*nominees*], and the (lives and) life of the (survivors and) survivor of them, One annuity or yearly sum of —— pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the day of the date of the above-written bond or obligation; AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*obligee*], his executors, administrators, or assigns, in case the survivor of them the said [*nominees*] should happen to depart this life on any day on which any

Condition for payment of annuity,

and proportional part.

(*b*) *Vide postquam*, p. 485, n. (*b*). (*c*) *Vide postquam*, p. 489, n. (*c*).
(*d*) *Vide ante*, p. 460, n. (*b*).

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quarterly payment of the * said annuity or yearly sum of —— pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of —— pounds shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the survivor of them the said [*nominees*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds should have become due at the time of the decease of the survivor of them the said [*nominees*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— pounds as shall happen to be next and immediately preceding the day of the death of the survivor of them the said [*nominees*], to the day of the death of such survivor; *Then* the above-written bond or obligation shall be void, and of no effect (*e*).

REPURCHASABLE. *by one payment;*

(*e*) If the annuity be repurchasable by one payment add, *ut ante*, p. 462 *or* 465; adding, after the name of the *obligor*,

" his heirs, executors, or administrators."

And adding, after the name of the *obligee*,

" his executors, administrators, or assigns."

by instalments.

If the annuity be repurchasable at one time, or by instalments, add,

[Recital of agreement for repurchase of the whole at one time, or by instalments, giving three months notice].

" And [whereas upon the treaty for the purchase of the said annuity or yearly sum of —— pounds hereinbefore mentioned, it was mutually agreed by and between the said [*obligor*] and [*obligee*], that the said [*obligor*], his heirs, executors, administrators, or assigns, should at any time or times thereafter be at liberty to repurchase the said annuity or yearly sum of —— pounds, or any part thereof, not being less at any one time than (ten) pounds *per annum*, at the rate or price of (seventy) pounds for the purchase of every (ten) pounds *per annum*, and so in proportion for any larger sum, upon giving the said [*obligee*], his executors, administrators, or assigns, (three) months previous notice of such his or their intention to repurchase the said

annuity, or any part thereof, until the whole of the said annuity should be redeemed. Now] IT IS HEREBY DECLARED, That in case the said [*obligee*], his executors, administrators, or assigns, should at any time or times hereafter be minded and desirous of repurchasing the said annuity or yearly sum of —— pounds, or any part thereof, not being less at any one time than (ten) pounds *per annum;* and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or assigns, (three) months previous notice in writing, of what part of the said annuity the said [*obligor*], his heirs, executors, or administrators, shall be desirous of repurchasing, not being less at any one time than (ten) pounds *per annum, Then* he, the said [*obligee*], his executors, administrators, or assigns, shall and will, from time to time, on receiving such sum and sums of money as shall be due for the said annuity, and all arrears thereof, upon the day of repurchasing such part or parts thereof, at the expiration of such (three) months from the time of giving such notice or notices, accept, receive, and take (seventy) pounds for the repurchase of (ten) pounds *per annum* of the said annuity, and so in proportion for any larger sum that shall be expressed in such notice or notices, and shall be so desired to be paid off as aforesaid: AND on receiving such repurchase-money for any such part or parts of the said annuity as aforesaid, that he the said [*obligee*], his executors, administrators, or assigns, shall and will, from time to time, at the request, costs, and charges of the said [*obligor*], his heirs, executors, administrators, or assigns, execute such reasonable and proper assignments or declarations of trust, of such part or parts of the said annuity as shall be so repurchased, unto or in favour of the said [*obligor*], his heirs, executors, administrators, or assigns, or of such person or persons as he or they shall direct or appoint; *Or* otherwise shall and will, from time to time, release and discharge the said [*obligor*], his heirs, executors, administrators, and assigns, from the payment of such part or parts of the said annuity as shall be so repurchased as afore*said: AND on receipt of the [*470] whole of the money for the repurchase of the said annuity or yearly sum of —— pounds, and all arrears of the said

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Declaration, giving the obligor a right to repurchase by instalments.

BOND ONLY, OR WITH WARRANT OF ATTORNEY, FOR NOMINEES' LIVES, REPURCHASABLE BY INSTALMENTS.

annuity, and such proportional part thereof as aforesaid, the said [*obligee*], his executors, administrators, or assigns, shall and will deliver to the said [*obligor*], his heirs, executors, administrators, or assigns, the above-written bond or obligation, to be cancelled and destroyed (and acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment to be entered up by virtue of the said warrant of attorney); or otherwise assign the same (respectively) in such manner as he or they shall direct and appoint."

SEALED AND DELIVERED by the above named [*obligor*], and [*obligee* (*d*)], in the presence of

Bond having mutual agreement not mentioned elsewhere, should be executed by obligee.

(*d*) When there is any mutual agreement in a bond (such as the above for repurchase by instalments), requiring something to be done by the obligee, and which is not mentioned in some collateral instrument executed by the obligee, he should execute the bond; and the obligor should have an *examined* copy of it, at the least. *Vide* the note *infra*, on SECONDARY EVIDENCE.

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BOND ONLY, WITH SURETY, REPURCHASABLE.

BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *with a* SURETY (*a*); *either where the Annuity is* REPURCHASABLE *by the Grantor, or by his Surety, or where it is not repurchasable.*

Obligation from two to one.

KNOW ALL MEN *by these presents*, that, *We* [*obligor*], of &c., and [*surety*], of &c., are held and

Consideration money cannot be recovered from surety for payment of annuity.

(*a*) Where an annuity bond granted by two became void by the neglect of the grantee in not registering a memorial under the statute, it was decided that he could not recover back any part of the consideration money from the one *who was known* to be only a *surety* for the

firmly bound to [*obligee*], of &c., in the sum of —— pounds of lawful money of Great Britain, to be paid

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other, and had not in truth received any part of it, notwithstanding they both joined in signing a receipt for it; a receipt not being *conclusive* evidence against the party who signs it. *Stratton* v. *Rastall*, 2 Durn. & East, 366.

Surety liable, though principal be *bankrupt*.

The principal's certificate under a commission of *bankrupt*, is no bar to the creditor's proceeding against the sureties. *Ex parte Williamson*, 1 Atk. 84; *Inglis* v. *Macdougal*, 1 Moore, 196; 1 Montagu's Bankrupt Laws, 361, 2nd ed. [See stat. 6 Geo. 4, c. 16, *post*, p. 477 *b*.]

Before 49 Geo. 3, c. 135, bankrupt was liable to surety after certificate.

Before the 49 Geo. 3, c. 135, s. 8, if the creditor recovered from a surety after the bankruptcy of the principal, and the surety afterward proceeded against the principal, the certificate was not any bar to the claim of the surety; because, at the time of the bankruptcy, the bankrupt was not indebted to the surety; he therefore could not be a creditor under the commission, not being *damnified* at that time: and *till damnified*, (which he could not be till he had been called upon and had paid) he could not bring an action: and as he did not pay till after the commission issued, consequently, his whole damage and cause of action arose *after the bankruptcy;* and therefore could not be discharged by the certificate. *Per* Lord *Mansfield*, *Taylor* v. *Mills*, Cowp. 527; *Young* v. *Hockley*, 3 Wils. 346; *Donnelly* v. *Dunn*, 2 Bos. & Pull. 45.

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Sureties of bankrupts having paid any debt after the commission, may prove under the commission.

*But by stat. 49 Geo. 3, c. 121, s. 8, it was enacted " that in all cases of commissions of bankrupt already issued, under which no dividend has yet been made, or under which the creditors, who have not proved, can receive a dividend equally in proportion to their respective debts, without disturbing any dividend already made, and in all cases of commissions of bankrupts hereafter to be issued, where at the time of issuing the commission any person shall be surety for or be liable for any debt of the bankrupt, it shall be lawful for such surety or person liable, if he shall have paid the debt, or any part thereof in discharge of the whole debt, although he may have paid the same after the commission shall have issued, and the creditor shall have proved his debt under the commission, to stand in the place of the creditor as to the dividends upon such proof; and when the creditor shall not have proved under the commission, it shall be lawful for such surety or person liable, to prove his demand in respect of such payment, as a debt under the commission, not disturbing the former dividends, and to receive a dividend or dividends proportionably with the other creditors taking the benefit of such commission, notwithstanding such person may have become surety or liable for the debt of the bankrupt, after an act of bankruptcy had been committed by such bankrupt; *provided* that such person had not at the time when he became such surety, or when he so became liable for the debt of such bankrupt, notice of any act of bankruptcy by such bankrupt

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to the said [*obligee*] or to his certain attorney, executors, administrators, or assigns: For which pay-

Issuing commission notice, although afterwards superseded.

Certificate of bankrupt, discharges him from liability to surety.

committed, or that he was insolvent, or had stopped payment; *provided always*, that the issuing a commission of bankrupt, although such commission shall afterwards be superseded, shall be deemed such notice: *And* every person against whom any such commission of bankrupt has been or shall be awarded, and who has obtained or shall obtain his certificate, shall be discharged of all demands, at the suit of every such person having so paid, or being hereby enabled to prove as aforesaid, or to stand in the place of such creditor as aforesaid, with regard to his debt in respect of such suretyship or liability, in like manner to all intents and purposes as if such person had been a creditor before the bankruptcy of the bankrupt, for the whole of the debt in respect of which he was surety, or was so liable as aforesaid."

Annuity creditors may prove for the value of the annuity, under the commission of bankrupt.

By s. 17, it was enacted, "that it shall be competent to any annuity creditor of any person against whom a commission of bankrupt shall issue after the passing of this act, whether the same shall be secured by bond *or* covenant, or bond *and* covenant, or by whatever assurance or assurances the same shall be secured, and whether there shall or shall not be or have been any arrears of such annuity at or before the

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*time of the bankruptcy, to prove under such commission as a creditor for the value of such annuity, which value the commissioners shall have power and are hereby required to ascertain; and the certificate of every bankrupt under whose commission such proof shall be *or might have been made*, shall be a discharge of such bankrupt against all demands whatever in respect of such annuity, and the arrears and future payments thereof, in the same manner as such certificate would discharge the bankrupt with respect to any other debt proved, or which might have been proved under the commission."

Certificate of bankrupt is a discharge from payment of annuity.

Surety liable to a debt of bankrupt before commission, cannot sue him after certificate.

In *Stedman* v. *Martinnant*, 13 East, 427, the plaintiff having accepted a bill payable at a future day for the accommodation of the defendant, the latter afterwards, and before the bill became due, committed an act of bankruptcy, followed by a commission, which was afterwards superseded; and time was given to the bankrupt by his creditors; and the plaintiff thereupon accepted another bill for the same debt, with the addition of interest and stamp: it was held that this was a continuation of the same suretyship by the plaintiff for the defendant, which existed before the act of bankruptcy and the first commission; and a second effectual commission having afterwards issued upon the same act of bankruptcy, before the plaintiff's second acceptance became due, which was paid when due, it was held that the amount was proveable as a debt under such commission, by virtue of the 49 Geo. 3, c. 121, s. 8, and was consequently barred as a personal demand against the bankrupt by his certificate. Lord *Ellenborough*, in delivering the judgment of the Court, said, the giving of

ment to be well and faithfully made, We bind ourselves and each of us, our and each of our heirs, exe- BOND ONLY, WITH SURETY, REPURCHASABLE.

the second acceptance upon the new bill for the prior debt, did not discharge the original debt, for which the plaintiff had become surety before the act of bankruptcy; and in paying that second bill, the plaintiff was only paying the same debt which he was liable to pay as surety for the defendant upon the first bill. Then is not this a case within the 8th section of the statute referred to; by which the surety for a debt proveable under a commission, though not paid by him till after the issuing of the commission, shall stand in the place of the original creditor as to the whole of the debt so paid? The act however provides, that this shall not extend to one, who, when he became surety, had either notice in fact of the act of bankruptcy committed, or implied notice from the issuing of a commission, though such commission were afterwards superseded. But in order to affect the plaintiff's debt with such implied notice, it was necessary for him to bring down the commencement of the suretyship to a period subsequent to the issuing of such commission afterwards superseded, which he has failed to do; and therefore it stands as a debt *which [*474] was proveable under the commission, and is consequently barred by the defendant's certificate.

In *Wood* v. *Dodgson*, 2 Maule & Selw. 195, where, upon a dissolution of partnership between three partners, two of the three assigned to the other all their shares in the partnership debts and effects, and the other covenanted to pay all debts then due from the partnership, and to indemnify the two from the payment of the same, and from all actions and costs by reason of the non-payment, and afterwards became bankrupt, and a commission issued against him, under which he obtained his certificate; and afterwards the holder of a bill accepted by the three partners, and due before the dissolution of the partnership, sued the two, and they were obliged to pay the bill: Held, that by stat. 49 Geo. 3, c. 121, s. 8, the certificate might be pleaded in discharge of an action brought by the two against the other, upon his covenant. Lord *Ellenborough*, C. J., said,—This is quite a new case, and depends entirely upon the words of the statute; but I cannot help thinking it falls within them. Before the statute, this debt could not have been proved under the commission. The words of the statute are, "where any person shall be surety for, or liable for, any debt of the bankrupt." Here the plaintiffs have assigned all their interest in the partnership effects, in consideration of a covenant of indemnity on the part of the bankrupt, which left them still liable as before to the original creditors of the partnership: they were liable at law as co-debtors with the bankrupt for his and their own debt; but in equity he was solely liable, and they were sureties; for by the covenant he became, as between the parties to the covenant, the principal debtor—the debt was his debt, although, as to other parties, the plaintiffs still remain

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cutors, and administrators, and every of them, jointly and severally, firmly by these presents, *Sealed* with

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liable; and therefore, when they paid this debt, they paid it in his discharge. I cannot therefore say that this case does not fall within the act of Parliament, which does not merely contemplate legal, but equitable liability.

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Bail not sureties for bankrupt, within stat. 49 Geo. 3, c. 121, s. 8.

*In *Hewes* v. *Mott*, and *Dalby* v. *Mott*, 2 Marsh. 192, a rule had been obtained, calling on the plaintiffs in each of these actions to shew cause why the defendant should not be discharged out of custody, he having become bankrupt and obtained his certificate. The plaintiffs had been bail for the defendant in a former action, and being fixed with the debt, paid a composition after the commission issued. The ground of this application was, that "at the time of issuing the commission, they were sureties for," or at least, "were liable for the debt of the bankrupt," and therefore might prove under the commission, by virtue of the 49 Geo. 3, c. 121, s. 8.—Lord Chief Justice *Gibbs*, in delivering the judgment of the Court, said, "on considering the act, we do not think that bail are to be considered as *sureties* for, or as *liable for the debt* of the bankrupt, within the meaning of the act. They enter into a bond for the defendant's *appearance*, and their immediate responsibility is to the sheriff. Being a

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question of general importance, we have *communicated with the Court of King's Bench on the subject; and they agree with us in thinking, that bail are not to be considered as sureties within the act;" and therefore the rule was discharged.

The bankruptcy and certificate of one of several joint grantors of an annuity, and covenantors for payment, discharges the bankrupt, but not his co-defendants.

In *Baxter* v. *Nichols*, 4 Taunt. 90, the defendant, who was a surety, had, with three others, jointly and severally granted by deed to the plaintiff, an annuity, and jointly and severally covenanted for the payment, and the annuity was further secured by a warrant of attorney to confess joint and several judgments. A joint judgment upon the covenant had been entered up against the four, and execution had issued, and a levy had been made upon the goods of *Nichols*, for whom a rule *nisi* had been obtained to set aside the execution, judgment, and warrant of attorney, upon affidavits, which stated, that since the grant of the annuity, the defendant *Nichols* had become a bankrupt, and obtained his certificate; the consequence of which was conceived to be, that under the statute 49 Geo. 3, c. 121, s. 17, the annuity was vacated, and all the securities had become void. Lord Chief Justice *Mansfield* said, he saw no reason why the plaintiff might not proceed on the joint judgment against the other three, though the fourth was discharged by bankruptcy. The *fieri facias*, which was against four, was therefore not to be set aside, except so far as related to this particular man; as to him, the rule must be absolute *pro tanto*.

[A point much agitated upon the act in question was, whether the annuity debtor, becoming bankrupt, was discharged by his certificate from his liability to the surety for sums paid by the latter on his account, ac-

our seals: DATED the —— day of ——, [in the —— year of the reign of our sovereign lord *George* the

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cruing due *after* the issuing of the commission; and it was held that he was not.]

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Surety paying arrears of annuity accruing due *after* the issuing of the commission, not within stat. 49 G. 3, c. 121, s. 8.

*Thus, in *Welsh* v. *Welsh*, 4 Maule & Selw. 333, the plaintiff became surety for the defendants in an annuity deed, and afterwards the defendants became bankrupt, and obtained their certificate, and the plaintiff, after the allowance of the certificate, was called upon and compelled by the annuity creditor to pay several sums for arrears of the annuity due after issuing the commission; to recover which, he brought this action, and held the defendants to bail. And upon a rule *nisi* for discharging the defendants on common bail, upon the ground of their bankruptcy and certificate, *Abbott* shewed cause, and contended that this was not a case in which the plaintiff could, by stat. 49 Geo. 3, c. 121, s. 8, have come in and proved under the commission; for this was not a debt at the time of issuing the commission, nor was he called on to pay it until after the certificate. And sec. 17 only applies to the annuity creditor, but not to enable the surety to come in and prove.—*Peake, contrà,* contended, that the act meant to place the surety in the condition of being able to come in under the commission, and have the value of the annuity ascertained by the commissioners; and he cited *Stedman* v. *Martinnant*, 12 East, 427, *ante*, p. 473, —Lord *Ellenborough*, C. J., said, the surety cannot compel the annuity creditor to come in and prove; and it is not a debt *quoad* the surety, until he is in a condition to be damnified by it. If the Legislature intended such a case as this, they have not so said, nor have they used language sufficiently clear to enable us so to say. And Mr. Justice *Le Blanc* said, by sec. 17, the annuity creditor, whether there shall or shall not be arrears due, may prove for the value of the annuity.—Rule discharged.

But the above decision is unsatisfactory.

It is conceived, that the decision in *Welsh* v. *Welsh*, is directly contrary to the 8th and 17th sections of the 49 Geo. 3, c. 121, *ante*, p. 472; and also contrary to the other decisions before stated, but particularly to *Baxter* v. *Nicholls*, *ante*, p. 476: and it is observable, that Lord *Ellenborough* used the very words and reasoning of Lord *Mansfield* in *Taylor* v. *Mills*, Cowp. 527, *ante*, p. 471, which was perfectly correct as to the law before the late act. In *Welsh* v. *Welsh*, the 8th sect. of the act was not pressed on the Court, and it was disregarded, most probably, through inadvertence. *Vide* 2 Montagu's Bankrupt Laws, 155, 2nd ed. who appears also to be dissatisfied with the decision in *Welsh* v. *Welsh*.

Remarks upon *Welsh* v. *Welsh*.

[†It is not stated in the report of *Welsh* v. *Welsh*, whether a final dividend had been declared, when the surety paid, or *might* have paid, the sums for which the action was brought. If so, inasmuch as he had no opportunity

† The remainder of this page, and several subsequent pages, have been added by the present Editor.

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fourth, by the grace of God, of the united kingdom of Great Britain and Ireland king, defender of the

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of proving and receiving a dividend, it is apprehended that the objection here urged to the decision cannot be sustained; for it was evidently not the intention of the Legislature that the bankrupt should be discharged from his liability to the surety, unless the latter was in time to have the benefit of the commission by receiving a dividend. The case of *Baxter* v. *Nicholls*, *sup.* p. 476, too, is clearly distinguishable, for there the question was between the grantor and grantee of the annuity, and not, as in the present case, between the grantee and his surety; and the act, it will be recollected, enables the *annuitant* to prove the value, but the *surety* only the sums paid by him. The case of *Welsh* v. *Welsh* has been recognised and followed in several subsequent cases.

Thus, in *M'Dougall* v. *Paton*, 2 J. B. Moore, 644; *S. C.* 8 Taunt. 584, where A. having become bound as surety for B. for the payment (with other monies) of a yearly rent of 117*l.* B. became bankrupt, and, after his bankruptcy, A. paid three years' rent which accrued subsequently to the bankruptcy; and it was held, that, as the debt did not arise until after the issuing of the commission, the principal was not discharged by his certificate; *Dallas*, C. J., observing, "that where a person is to be considered as surety or liable for the debt of a bankrupt within the meaning of the words of the stat. 49 Geo. 3, c. 121, *such debt must exist at the time of the issuing of the commission;* and that, as the rent in question was not then due, it did not constitute such a debt."

The point received a final determination in a subsequent case, where an action was brought on a bond given by the defendant to the plaintiff to indemnify him against an annuity, in which he had joined the defendant as surety. The annuity was repurchasable either by the plaintiff or defendant, upon seven days' notice. The defendant became bankrupt, and obtained his certificate. The annuitant proved the value of the annuity under the commission. At the time of the bankruptcy there were arrears due, which the plaintiff paid, and subsequently to the issuing of the commission, *but before a final dividend was declared*, he redeemed the annuity, and for the sum so paid brought the present action. The Court of King's Bench held him to be entitled to recover the sum paid for redemption, but not the arrears due at the time of the bankruptcy, which he might have proved, and for which, therefore, the bankrupt was discharged by his certificate. This, indeed, was admitted, and the principal discussion was on the former point. *Flanagan* v. *Watkins*, 3 Barn. & Ald. 186. A writ of error was then brought in the Exchequer Chamber, when the judgment in B. R. was affirmed. Lord *Gifford*, who delivered the judgment of the Court, founded his conclusion on the circumstance, that the act of proving the value of the an-

faith, and] in the year of our Lord, one thousand eight hundred and

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nuity was not voluntary on the part of the creditor, but compulsory †, as the debt being proveable would be discharged by the certificate: and that if the grantee did not prove the value, the surety could not; and, therefore, the bankrupt continued liable for the amount paid for the redemption of the annuity subsequently to the commission. *Watkins* v. *Flannagan*, 8 J. B. Moore, 480; *S.C.* 13 Price, 24.

Remarks upon *Watkins* v. *Flannagan.*

It is remarkable that Lord *Gifford* does not at all combat the objection founded in the clause which enables a surety to prove any sums he has paid subsequently to the issuing of the commission, without prejudice to dividends already declared, which constituted the great difficulty of his Lordship's construction; he treated it as if the only question was, whether the value of the annuity was proveable by the surety, with respect to which there could be no doubt, the act containing no such authority. As it appears, however, that a final dividend had not been made when the surety redeemed the annuity, this case, however unsatisfactory some of the reasoning in the judgment certainly is, must, it is conceived, be considered as decisively establishing that the clause in question, in the stat. of 49 Geo. 3, does not discharge the bankrupt in respect of any sums paid by the surety, accruing due subsequently to the issuing of the commission, whether he was in time to get a dividend on the sums so paid or not. The point, however, is now of comparatively little importance, as the law respecting the liability of annuity-debtors, standing in the relation of principal and surety, has been considerably modified by the late bankrupt act, (6 Geo. 4, c. 16), which has introduced two salutary alterations: First, that of making it compulsory on the creditor, in order to charge the surety, to prove the value against the estate of the principal, and thereby taking it out of his power to exclude the surety (as he formerly could), from the benefit of the commission, by refusing to prove the value; and, secondly, making the bankrupt's certificate operate as a discharge from his liability to the surety, as well as the annuity-creditor. The annuity-clauses in the act, are as follow:—

Bankrupt act,

"Any annuity-creditor of any bankrupt, by whatever assurance the

† It is rather difficult to see the bearing of this argument upon the question. It was not, under the stat. 49 Geo. 3, "compulsory" on an annuity-creditor to prove against the grantor's estate, but it was obviously his *interest* to do so, since, whether he proved or not, the debt, as between him and the bankrupt, would be barred by the certificate of the latter; but, by not proving, he did not, it is conceived, lose his remedies against the surety, whom he might throughout have chosen to consider as his debtor, without resorting at all to the person who received the money, and this right is not prejudiced by the bankruptcy of the latter. This, it will be perceived, is remedied by the late act.

Recital of contract for purchase.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*], for the pur-

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6 Geo. 4, c. 16, s. 54.

same be secured, and whether there were or not any arrears of such annuity due at the bankruptcy, shall be entitled to prove for the *value* of such annuity, which value the commissioners shall ascertain, regard being had to the original price given for the said annuity, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof, to the date of the commission.

Annuity creditor may prove value,

and not to sue surety until he has proved.

"It shall not be lawful for any person entitled to any annuity granted by any bankrupt, to sue any person who may be collateral surety for the payment of such annuity, until such annuitant shall have proved under the commission against such bankrupt for the value of such annuity, and for the payment thereof; and if such surety, after such proof, pay the amount proved as aforesaid, he shall be thereby discharged from all claims in respect of such annuity, and if such surety shall not (before any payment of the said annuity subsequent to the bankruptcy shall have become due), pay the sum so proved as aforesaid, he may be sued for the accruing payments of such annuity until such annuitant shall have been paid or satisfied the amount so proved, with interest thereon at the rate of four *per cent. per annum* from the time of notice of such proof and of the amount thereof being given to such surety; and after such payment or satisfaction, such surety shall stand in the place of such annuitant in respect of such proof as aforesaid, to the amount so paid or satisfied as aforesaid, by such surety; and the certificate of the bankrupt shall be a discharge to him from all claims of such annuitant, or of such surety in respect of such annuity: provided that such surety shall be entitled to credit in account with such annuitant for any dividends received by such annuitant under the commission, before such surety shall have fully paid or satisfied the amount so proved as aforesaid."

Surety discharged by paying the value proved by the creditor.

Or he may go on paying the annuity until the amount proved, and interest, have been paid.

Surety to stand in the place of proving creditor.

Certificate of bankrupt to discharge him from claim of annuitant and surety.

Surety to be allowed credit for dividends received by annuitant.

Act applies to commissions already issued.

This clause has been held to apply to commissions issued before the statute, where the annuity-creditor had an opportunity of proving. *Bell* v. *Bilton*, 1 Moore & Payne, 574; *S.C.* 4 Bing. 615. In this case *no* dividend had been declared, and, therefore, the question was not raised as to what would be the effect, where, though a final dividend had not been made, yet the sum remaining to be distributed was insufficient to place the annuity-creditor on an equal footing with the other creditors.

Whether statute applies to the case of bankrupt sureties.

It is not clear, whether the statute applies to the case of a *surety* becoming bankrupt. The term, "annuity-creditor of any bankrupt," might seem to embrace every case in which the bankrupt was liable to pay the annuity, whether in the character of principal or surety; but the prevailing opinion seems to be, that the statute has no application to such a case. And this opinion derives some support from the subsequent clauses, which, while they explicitly define the nature and extent of the surety's liability, after the value of the annuity has been proved against the estate of the bankrupt principal, have no corresponding provisions adapted to the

chase of one annuity or yearly sum of —— pounds of lawful money of Great Britain, to be paid to the said

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converse case, of the surety becoming bankrupt. Assuming this hypothesis to be correct, the consequence is, that the value not being proveable under his commission, the surety continues liable to pay the annuity to the creditor, although he may have obtained his certificate, and must resort to the principal, to be reimbursed the sums he shall have paid on account of it. If the principal should become bankrupt, and should obtain *his* certificate, *he* would be discharged not only from the claim of the creditor, but of the surety also. This seems to place the surety in a situation of some hardship, his own certificate being no protection against the claim of the annuitant, while the certificate of the principal excludes his (the surety's) claim to indemnity. Perhaps this consequence was not foreseen by the framers of the act, or they may have thought that it was unjust to the creditors of the surety, that the value of the annuity should be proved against his estate which had received no advantage from it, as well as to the bankrupt principal, that he should continue liable to the surety after his own estate had paid a dividend on the value, of which the surety had had the benefit.

It was held under the stat. 49 Geo. 3, (and the late act made no alteration in this respect), that where one of three sureties paid money on account of the annuity after the bankruptcy of a co-surety, the certificate of the latter was no bar to an action for contribution. *Browne* v. *Lee,* 6 Barn. & Cress. 689.]

Consideration for annuity may be proved in bankruptcy, after securities are set aside.

If an annuity be void, the creditor may prove for the consideration that is due: but it has been determined, that if he insist upon his se- [*478] *curities at the date of the commission, he cannot afterwards abandon them and prove the consideration. *Ex parte James,* 5 Ves. 708, *sed quære* as to the latter part of the rule. 1 Montagu's Bankrupt Laws, 211, 2nd ed. If the deeds for securing an annuity are void, the consideration is proveable under a commission against the grantor of the annuity, although the instruments are not actually set aside till the bankrupt has obtained his certificate. *Walker* v. *Liscarry,* 6 Esp. N. P. C. 98. If an annuity be not enrolled from a fraudulent representation, that it is secured upon lands in fee simple of equal annual value, and so not within the statute, it seems that the value of the annuity is proveable. *Ex parte Wright,* 1 Rose, 308; 19 Ves. 255, *S. C.* A bond for the absolute payment at fixed periods of an annuity for a term of years, is proveable under a commission of bankrupt, issued against the grantor of the annuity. *Pattison* v. *Banks,* Cowp. 540.

Commissioners of bankrupt must value annuities according to evidence.

The intention of the Legislature in directing the commissioners to ascertain the value of the annuity, was not that the commissioners should have the power to fix the value, but that they should decide according to evidence, with respect to the value. *Ex parte Thistlewood,* 1 Rose, 290. In general, the value to be proved is the original sum given for the pur-

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[*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever,

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chase of the annuity, with the diminution occasioned by the lapse of time since the grant. *Ex parte Whitehead*, 1 Meriv. 127. But under particular circumstances, the value at the time of the proof may be much greater than at the time of the original purchase; thus, if the grantor of an annuity be in an infirm state of health when the annuity is granted, and afterwards recover. *Ex parte Thistlewood*, 1 Rose, 290, 19 Ves. 237, *S. C.* [But the late act precludes the commissioners from estimating the value by any other criterion than the original price. *Ex parte Slack*, 1 Gl. & Jam. 346; *Ex parte Webb*, 2 Ib. 29; *Ex parte Fisher*, Ib. 102.]

Set-off may be pleaded.

A set-off may be pleaded to an action for the arrears of an annuity. *Collins* v. *Collins*, 2 Burr. 820. But where A. purchased an annuity of 200*l.* for 2000*l.* to be paid after her death; the grantor becoming bankrupt and indebted to her in 2275*l.* 5*s.* 9*d.* it was decided, that the annuitant was not entitled to set off the 2000*l.* against the 2275*l.* 5*s.* 9*d.*, for as she could not be compelled to pay in advance, the bankrupt ought not to be compelled to take in advance. *Ex parte Whitaker*, 1 Rose, 301; 1 Montagu's Bankrupt Laws, 212, 225, 2d ed.; 1 Cooke's Bankrupt Laws, 157, 7th ed.

Creditor for annuity may receive dividends from estate of *insolvent debtor*, in same manner as if insolvent had been bankrupt.

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It will be useful to advert to the law respecting annuities granted by *insolvent debtors*. By the act 1 Geo. 4, c. 119, intitled "*An act for the relief of insolvent debtors in* England; *to continue in force until* **the first day of* June, *one thousand eight hundred and twenty-five*," it is by the 10th section enacted, "That all and every creditor and creditors of any such prisoner, for any sum and sums of money payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever, may be and shall be entitled to be admitted a creditor or creditors, and shall be entitled to receive a dividend or dividends of the estate of such prisoner, in such manner and upon such terms and conditions as such creditor or creditors would have been entitled unto by the laws now in force, if such prisoner had become a bankrupt, the amount upon which such dividend shall be calculated, and the terms and conditions on which the same shall be received, being first settled by the said court ["*The Court for the Relief of Insolvent Debtors*"]; and without prejudice in future to their respective securities, otherwise than as the same would have been affected by a proof made in respect thereof by a creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission."

51 G. 3, c. 125, discharged insolvent grantor from payment of annuity to grantee;

There was a similar provision to the above in the insolvent debtors' act, 51 Geo. 3, c. 125, s. 16, and it was held, that the grantor of an annuity, liberated by virtue of that act, is discharged both as to his person and property from all future payments of the annuity; but that the act was no discharge of his sureties, or of specific securities. *Cowley* v. *Bussell*, 4 Taunt.

for and during the natural life of the said [*obligor*], at or for the price or sum of —— pounds; *And* which said sum

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460. And the person of the insolvent is discharged, under that act, [and under stat. 1 Geo. 4, c. 119,] from the arrears of an annuity secured by *covenant* [or bond], accrued after his discharge; because the 49 Geo. 3, c. 121, s. 17, discharges a bankrupt therefrom. *Mence* v. *Graves*, 4 Taunt. 854; [*Collins* v. *Lightfoot*, 8 Dowl. & Ryl. 339; *S.C.* 5 Barn. & Cress. 581]. But it was held, that a person discharged under 51 Geo. 3, c. 125, is liable to his *surety* for the arrears of an annuity due since his discharge, which the surety has been obliged to pay. *Page* v. *Bussell*, 2 Maule & Selw. 551. [See also *Freeman* v. *Burgess*, 1 Moore & Payne, 91.] Mr. Justice *Le Blanc* observed, the 51 Geo. 3, says, that the creditor shall be entitled to be admitted a creditor; but it does not say, that the debtor shall be discharged, in the same manner as if he had been a bankrupt. Mr. Justice *Bayley* said, even in the case of a bankrupt, if the annuity creditor does not come in and prove, but, disregarding the bankruptcy, sues the surety, the surety cannot insist on the certificate; and if he cannot, may not the surety afterwards resort to the bankrupt? The present is a debt accrued since the debtor's discharge, and therefore the plaintiff is entitled to judgment. This opinion of Mr. Justice *Bayley* seems to be contrary to the 49 Geo. 3, c. 121, s. 8, and 17, *ante*, p. 472, and to his own determination with the rest of the Court, in *Wood* v. *Dodgson*, 2 Maule & Selw. 195, *ante*, p. 474. The words of the act 51 Geo. 3, c. 125, s. 16, to which Mr. Justice *Le Blanc* alluded, are the same as those copied *ante*, p. 479, from the act 1 Geo. 4, c. 119, s. 10; and it is conceived that those words were sufficient to discharge the insolvent by virtue of the 49 Geo. 3, c. 121, s. 8; which section appears in *Page* v. *Bussell* to have been wholly forgotten both by the Court and counsel.

but it has been held not to discharge him from payment to surety.

[This question cannot now arise on the late bankrupt act, which, we have seen, expressly discharges a bankrupt grantor of an annuity from the claims of his surety. The law, however, as to the liability of *insolvent debtors* to their sureties, remains untouched by the late insolvent act. 7 Geo. 4, c. 24, s. 51, which contains the following clause relating to annuities:

Insolvent Debtors' Act, 7 Geo. 4, c. 24, s. 51.

"That the discharge of any such prisoner so adjudicated as aforesaid, shall and may extend to any sum and sums of money which shall be payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other securities of any nature whatsoever; and that every person and persons who would be a creditor or creditors of such prisoner for such sum or sums of money, if the same were presently due, shall be admissible as a creditor or creditors of such prisoner for the value of such sum or sums of money so payable as aforesaid, which value the said court shall upon application at any time made in that behalf ascertain; regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the

Insolvent discharged from annuities, and creditor may claim value.

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of —— pounds the said [*obligee*] hath on the day of the date of the above-written bond or obligation paid to *the said [*obligor*], as he the said [*obligor*] doth hereby admit and acknowledge. AND WHEREAS the above-bounden [*surety*] hath agreed to join with the said [*obligor*] in the above-written bond or obligation, subject to the condition hereunder written, as the surety of the said [*obligor*] for the due and punctual payment of the said annuity:

Payment of consideration money, and surety's agreement to join.

Condition. Payment of annuity.

NOW THEREFORE THE CONDITION of the above-written bond or obligation is such, That if the said [*obligor*] and [*surety*], or either of them, their, or either of their heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes and clear of all other deductions whatsoever, by quarterly payments, on the quarterly days or times in the year following, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first quarterly payment thereof to become due and be made on the —— day of —— next ensuing the date of the above-written bond or obligation, if the said [*obligor*] should be then living: AND ALSO if the heirs, executors, or administrators of the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum

And proportional part.

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grant thereof, to the filing of such prisoner's petition; and such creditor or creditors shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such prisoner's discharge under this act." See further, as to principal and surety for payment of an annuity, *post.* p. 504, n. (*b*); p. 509, n. (*d*).]

of —— pounds shall become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the above-written bond or obligation to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds should have become due at the time of the decease of the said [*obligor*], *then from such of the said quarterly days of payment of the said annuity or yearly sum of —— pounds as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease; *Then* the above-written bond or obligation shall be void and of no effect; *Otherwise* shall be and remain in full force and virtue.

BOND ONLY, WITH SURETY, REPURCHASABLE.

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If the annuity be repurchasable, add,

REPURCHASABLE.

Recital of agreement for repurchase.

And [whereas upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, secured by the above-written bond or obligation, it was mutually agreed by and between the said [*obligor*], [*surety*], and [*obligee*], that the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should at any time hereafter be at liberty to re-purchase and buy up the said annuity or yearly sum of —— pounds, upon such terms and conditions as are hereinafter particularly mentioned and expressed.

Declaration of agreement for repurchase, on seven days' notice, and paying original purchase money, and one quarter's annuity.

Now *it is hereby declared*, that] in case the said [*obligor*], or the said [*surety*], his heirs, executors, or administrators, or any or either of them, should at any time hereafter be minded and desirous of re-purchasing or buying up the said annuity or yearly sum of —— pounds; and of such his, their, or either of their intention should give unto the said [*obligee*], his executors, administrators, or assigns, notice in writing by the space of (seven) days, and should, at the expiration of the time to be mentioned in such notice, well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, the sum of —— pounds of lawful money of Great Britain, being the original purchase-money for the said annuity and one (quarter) of a year's annuity in advance;

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together with all and every such sum and sums of money as shall be then due for the arrears of the said annuity; and together also with a proportional part of the same annuity from the last day of payment thereof preceding such re-purchase, up to and including the day of re-purchasing

[*483] the same, as and in full *for the re-purchase of the said annuity or yearly sum of —— pounds above secured; *Then*, and in such case, if such re-purchase should be made by the said [*obligor*], the said annuity or yearly sum of —— pounds shall cease and determine, and be no longer paid or payable; and the above-written bond or obligation shall be void and of no effect; *But* if such re-purchase should be made by the said [*surety*], his heirs, executors, or administrators, the said annuity or yearly sum shall continue for his or their benefit, and the said bond or obligation shall be assigned to him or them, or to such person or persons as he or they shall direct or appoint, *subject* to the like right of the said obligor to re-purchase the same.

If annuity be purchased by surety, annuity to continue for his benefit.

SEALED AND DELIVERED by the above-named [*obligor*], [*surety*], and [*obligee* (*a*)], in the presence of

(*a*) *Vide ante*, p. 470, n. (*d*). The surety should have an *examined* copy of this bond, as well as the principal.

Examined copy of bond.

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BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

BOND *for securing an* ANNUITY *for the* OBLIGOR'S LIFE, *to* TWO *Obligees, as* TENANTS IN COMMON (*a*), *without any other Security; and either where the Annuity is, or where it is not* REPURCHASABLE.

Obligation from one to two.

KNOW ALL MEN *by these presents*, That I [*obligor*], of &c., am held and firmly bound to [*ob-*

[(*a*) As to obligations to a plurality of persons *severally*, *vide post*, Vol. 3, p. 180.]

ligee], of &c.; and [*other obligee*], of &c.; in the sum of £—— of lawful money of Great Britain and Ireland, to be paid to the said [*obligee*] and [*other obligee*], as tenants in common, or their respective attornies, executors, administrators, or assigns; *For* which payment well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents, *Sealed* with my seal: DATED the —— day of ——, in the —— year of the reign of our sovereign lord *George* the *fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland king, defender of the faith; *And* in the year of our Lord one thousand eight hundred and ——.

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

WHEREAS the above-named [*obligees*] have contracted and agreed with the above-bounden [*obligor*], for the absolute purchase of one annuity, or yearly sum of £—— of lawful money of Great Britain and Ireland, to be paid to the said [*obligees*] respectively, as tenants in common, their respective executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, *for and during the natural life of him the said [*obligor*], at or for the price or sum of £——; [(*a*) AND upon the treaty for the purchase of the said annuity or yearly sum of £——, it was agreed that all costs, charges, and expenses, attending the said contract, and for preparing and perfecting the securities for the same, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS, the said [*obligees*] have, on the day of the date of the above-written bond or obligation, [(*b*) in their own pro-

Recital of purchase of annuity by two obligees as tenants in common.

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Agreement as to expenses.

Recital of paying consideration money.

(*a*) *Vide ante*, p. 460, n. (*b*).

(*b*) Under the new annuity act, it is perfectly clear that this is an unnecessary statement, and need not be made either in any of the securities or in the memorial. *Ante*, p. 330 *b*.

Payment of consideration by agent need not be stated.

[Mr. Bythewood had, in the former edition, entered into a detailed examination of the cases (referred to in a note by the present editor, *ante*, p. 330 *b*), deciding, that, under the old annuity act, 17 *Geo.* 3, c. 26, it was necessary to state the fact of the money being paid by an agent; but as this doctrine is now applicable only to annuities granted before the late act, it has been thought advisable to omit them.]

BOND ALONE TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

per persons,] paid to the said [*ob*ligor*] [by the hands of [*agent*], of &c.,] the said sum* of £——; which he the said [*obligor*] doth hereby admit and acknowledge.

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[*490]

Condition, payment of annuity,

Now therefore THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*] should well and truly pay or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, for and during the natural life of him the said [*obligor*], *One* annuity or yearly sum of £—— of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of ——, next ensuing the day of the date of the above-written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*obligor*] should well and truly pay, or cause to be paid, unto the said [*obligees*] respectively, in equal shares and proportions, as tenants in common, their respective executors, administrators, or assigns, in case the said [*obligor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of £—— shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of *the said annuity or yearly sum of £—— shall have become due, then a proportional part of the quarterly payment of the said annuity, or yearly sum of £——, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the said [*obligor*]; *But* in case any quarterly payment of such annuity or yearly sum of £——, should have become due at the time of the decease of the said [*obligor*], then from such of the said quarterly days of payment of the said annuity of £——, as shall happen to be next and immediately preceding the day of the death of the said [*obligor*], to the day of his decease, *Then* the above-written bond or obligation shall be void and of no effect.

and proportional part.

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If the annuity be repurchasable, add,

BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

REPURCHASABLE.

Recital of agreement for repurchasing an annuity granted to two as tenants in common, on paying half a year's annuity.

AND [WHEREAS, upon the treaty for the purchase of the said annuity, or clear yearly sum of £—— herein-before mentioned, it was mutually agreed by and between the said [*obligees*] and [*obligor*], that the said [*obligor*] should, at any time hereafter, be at liberty to repurchase the said annuity, or clear yearly sum of £——, upon giving unto the said [*obligees*], or unto their executors, administrators, or assigns, seven days' notice in writing of such his intention, and paying unto the said [*obligees*], their executors, administrators, or assigns, in equal shares and proportions, at the expiration of the time to be mentioned therein, the full sum of £——, of lawful money of Great Britain and Ireland, as and for the consideration of such repurchase, being the original purchase-money, and two quarterly payments of the said annuity; together with all arrears that should be due on the said annuity, and a proportional part thereof from the last day of payment preceding such repurchase, up to and until repurchasing the same.

Declaration as to repurchase.

Now] *it is hereby Declared*, that in case the said [*obligor*] should at any time hereafter be minded and desirous of repurchasing the said annuity, or yearly sum of £——, and of such his intention should give unto the *said [*obligees*], their executors, administrators, or assigns, notice in writing by the space of seven days, that they the said [*obligees*], their executors, administrators, or assigns, shall and will, at the end of the said seven days from the time such notice shall be given as aforesaid, on receiving in equal shares and proportions, all and every sum or sums of money that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and until repurchasing the same as aforesaid, accept, receive, and take the said sum of £——, to be paid to them in equal shares and proportions, as and in full for the repurchase of the said annuity, or yearly sum of £——: AND, on receipt of the said sum of £——, and all arrears of the said annuity, or clear yearly sum of £——, and such proportional part thereof in manner aforesaid, shall and will

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BOND ALONE, TO TWO AS TENANTS IN COMMON; REPURCHASABLE.

deliver the above-written bond or obligation to the said [*obligor*], to be cancelled; *And then*, and in such case, the said annuity or yearly sum of £——, shall cease, determine, and be no longer payable (*d*).

Examined copy of bond.

(*d*) *Vide ante*, p. 470, n. (*d*), as to examined copy.

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BOND FOR ANNUITY FOR RELINQUISHING TRADE.

BOND *for securing an* ANNUITY, *in Consideration of relinquishing a Business.*

Obligation.

KNOW ALL MEN *by these presents*, That I, [*obligor*], of &c., (*common form of obligation from one to one, ut post*, p. 499).

Recital of establishing trade.

WHEREAS the above-named [*obligee*] hath for many years heretofore carried on the trade or business of a (surgeon and apothecary), and hath established a considerable practice and connection in the said trade or business, within the liberties of London and Westminster,

Recital of agreement to resign, in consideration of annuity.

AND WHEREAS the said [*obligee*] hath agreed to resign to or in favour of the said [*obligor*] the said business, so established by him as aforesaid, in consideration of an annuity (*a*) or yearly sum of—— *pounds, to be paid by the said [*obligor*], his heirs, executors, or administrators, to the said [*obligee*] and his assigns, during his life, at the times hereinafter mentioned.

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Recital of assignment of business.

AND WHEREAS in pursuance of such agreement, by indenture bearing even date with the above-written bond or obligation, and made between the said [*obligee*], of the one part; and the said [*obligor*], of the other part; the said [*obligee*] hath granted and yielded up unto the said [*obligor*], the liberty or privilege of carrying on the trade or business of a (surgeon and apo-

[(*a*) That the instrument creating or securing such an annuity as this need not be enrolled, *vide ante*, p. 335 *p.*]

thecary) heretofore carried on in (the liberties of London and Westminster) by the said [*obligee*], in the room and as the successor of the said [*obligee*], and all the benefit, profit, emolument, and advantage to arise therefrom; AND hath, by such indenture, entered into covenants with the said [*obligor*], for recommending and introducing the patients of the said [*obligee*] to the said [*obligor*], and for preventing the said [*obligee*] from exercising the said trade or business of (an apothecary and surgeon) within (*b*) (the liberties of London and Westminster) or within (ten) miles from the same; as by reference to the said indenture will appear.

BOND FOR ANNUITY FOR RELINQUISHING TRADE.

Covenant to recommend obligor,

and not to practice within certain limits.

NOW THE CONDITION of the above-written bond or obligation is such, that if the above-bounden [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], or his assigns, during the term of his natural life, *One* annuity or yearly sum of £—— of lawful money of Great Britain and Ireland, free from taxes, and without any deduction whatsoever, by half yearly payments, at and on the days or times following, that is to say; the —— day of ——, and the —— day of ——, in each and every year, by even and equal portions; the first half yearly payment thereof to begin and be made on the*—— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should within twenty days next after the decease of the said [*obligee*], well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], a proportional part of the said annuity, for the time which at his decease shall have elapsed of the half yearly payment thereof then growing due, *Then* the above-written bond or obligation shall be void and of no effect.

Condition for payment of annuity.

[*495]

And proportional part.

(*b*) *Vide ante*, p. 172, n. (*d*).

BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

BOND *for securing an* ANNUITY *for the* OBLIGEE'S LIFE, *in Consideration of a Conveyance and Surrender of Freehold and Copyhold Premises.*

Obligation from one to one.

KNOW ALL MEN *by these presents*, That I [*obligor*], of &c., am held and firmly bound to [*obligee*], of &c., in the sum of —— pounds of lawful money of the united kingdom of Great Britain and Ireland, to be paid to the said [*obligee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this —— day of ——, in the —— year of the reign of our sovereign lord *George* the *fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith; *And* in the year one thousand eight hundred and ——.

Recital of contract for purchasing annuity in consideration of conveyance and surrender of freehold and copyhold premises.

WHEREAS the above-bounden [*obligor*] hath contracted and agreed with the above-named [*obligee*], to grant to him and his assigns, a clear annuity or yearly sum of —— hundred pounds, for his natural life; AND the true and *bonâ fide* consideration for the purchase of the said annuity, is a conveyance (*a*) and surrender, made or to be made by the said [*obligee*] to the said [*obligor*], his heirs [*497] *and assigns, of certain freehold and copyhold messuages, lands, and hereditaments, of him the said [*obligee*], situ-

(*a*) *Vide post*, Vol. 2, p. 356, n.

ate in the parish of ——, or elsewhere, in the county of ——, (*a*).

BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

Now the Condition of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should, from time to time, during the natural life of the said [*obligee*], well and truly pay or cause to be paid unto the said [*obligee*], or his assigns, *One* annuity or clear yearly sum of £—— of lawful money of the united kingdom of Great Britain, to commence, or be considered as commencing, from the —— day of —— next preceding the date of the above-written bond, by even and equal payments, to be made half yearly, on the —— day of ——, and the —— day of —— in every year, clear of all deductions on any account whatsoever: and should make the first payment of the said annuity on the —— day of —— next ensuing the date of the said bond or obligation, *provided* the said [*obligee*] should be then living; *And* in the event of the death of the said [*obligee*], between or in the interval of any of the said half yearly days of payment, and either before or after the said —— day of —— next, then if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], [as part of his personal estate] such part of the said annuity of —— hundred pounds as shall be in proportion to the time or number of days which, inclusive of the day of the decease of the said [*obligee*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event, or as the case shall require, next after the —— day of —— last, if the said [*obligee*] should die prior to the —— day of —— *next: And if the said [*obligor*], his heirs, executors, or administrators, should pay such proportional part of the said annuity of £——, as soon after the decease of the said [*obligee*] as demand shall be made thereof by the executors, administrators, or assigns of the

Condition for paying annuity for obligee's life.

With proportional part to his decease.

[*498]

(*a*) That no memorial of the securities in a similar case to the above, is requisite, *vide ante*, p. 335 *p*.

Memorial not necessary.

BOND FOR ANNUITY, IN CONSIDERATION OF AN ESTATE.

said [*obligee*], and clear of all deductions whatsoever, *Then* the above-written bond or obligation shall be void and of no effect; or otherwise shall be and remain in full force and effect.

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BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

BOND *for securing an* ANNUITY; *collaterally secured by a Grant and Demise, and a Warrant of Attorney to confess Judgment; repurchasable at any Time after the Expiration of three Years, on giving three Months' Notice.*

Obligation from one to one.

KNOW ALL MEN *by these presents*, that I [*grantor*], of &c., am held and firmly bound to [*grantee*], of &c., in the sum of [*double the purchase money*] pounds of lawful money of Great Britain, to be paid to the said [*grantee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

Recital of contract for purchase of annuity, subject to be repurchased.

WHEREAS the above-bounden [*grantor*] hath contracted and agreed with the above-named [*grantee*], to grant to him, his executors, administrators, and assigns, a clear annuity or yearly sum of £——, for the term of (ninety-nine years) if the said [*grantor*] should so long live, subject nevertheless to be repurchased on the terms expressed in the condition hereunder written: AND the true and *boná fide* consideration to be advanced and given for the purchase of the said annuity is the sum of £——: AND the said [*grantee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*grantor*], the sum of £—— in *notes of the Governor and Company

Consideration.

Payment.

[*500]

of the Bank of England payable to bearer on demand, as and for the consideration for the grant of the said annuity: [(*a*) AND on the treaty for the sale and purchase of the said annuity it was agreed, that the costs and charges of preparing and perfecting the several securities for payment of the same annuity, and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS on the contract for the said purchase it was agreed, that for better securing the payment of the said annuity, the said [*grantor*] should execute a certain indenture of grant and demise relating thereto; which said indenture is already prepared and engrossed, and bears or is intended to bear even date with the above-written obligation, and is made or expressed to be made between the said [*grantor*], of the first part; the said [*grantee*], of the second part; and [*trustee*], of &c., of the third part: *And* that the same annuity should be further secured by the above-written bond or obligation; *And also* by a warrant of attorney to confess judgment thereon.

BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

Expenses.

Reference to collateral securities.

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*grantor*] should from time to time during the said term of (ninety-nine years) if the said [*grantor*] should so long live, or which shall first happen, until the repurchase of the said annuity, according to the provision hereinafter contained, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, *One* annuity or clear yearly sum of £—— of lawful money of Great Britain and Ireland, by equal quarterly payments, to be made on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions, and clear of all deductions on any account whatsoever: AND should make the first quarterly payment of the said annuity on the —— day of —— next ensuing the date of the said bond or obligation; provided the said [*grantor*] should be then living: AND in the event of the death of the said [*grantor*] be-

Condition, payment of annuity;

and proportional part.

(*a*) *Vide ante*, p. 460, n. (*b*).

BOND, WITH COLLATERAL SECURITIES, REPURCHASABLE.

[*501]

tween, or in the interval of any two of the said quarterly *days of payment, and either before or after the said —— day of —— next, then if the heirs, executors, or administrators of the said [*grantor*] should also well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, such part of the said annuity of £——, as shall be in proportion to the time or number of days, which, inclusive of the day of the decease of the said [*grantor*], shall have elapsed prior to his decease, and after the day of payment next and immediately preceding that event: And if the heirs, executors, or administrators of the said [*grantor*] should make the payment of such proportional part of the said annuity of £——, as soon after the decease of the said [*grantor*] as demand shall be made thereof by the said [*grantee*], his executors, administrators, or assigns, and clear of all deductions whatsoever: And if the said [*grantor*], or his assigns, should at any time after the expiration of (three) years, to be computed from the day of the date of the above-written bond or obligation, be desirous of repurchasing the said annuity of £——; and should give the said [*grantee*], his executors, administrators, or assigns, (three) calendar months' notice in writing of such his or their desire; and should upon the expiration of the said notice, or at any time afterwards, upon giving (three) calendar months' such notice as aforesaid, well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the sum of £—— of lawful money of Great Britain and Ireland; *and also* all and every sum and sums of money which shall be then due for or on account of the arrears of the said annuity of £——, and also a proportional part of the same annuity, up to and inclusive of the day of repurchasing the same; *and* all sums of money, if any, which shall be then due for or on account of any costs, charges, or expenses, occasioned by the non-payment of the said annuity; *Then*, and in either of the said cases, the above-written bond or obligation, and also the said warrant of attorney, shall be delivered up to be cancelled, or be cancelled and satisfaction acknowledged on the record of the said judgment to be entered up as aforesaid under the authority of the said warrant of attorney.

And payment of repurchase-monies.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

BOND *for securing an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by a Deed of Covenants and a Warrant of Attorney to confess Judgment, in which* TWO SURETIES *join;* REPURCHASABLE *by the Grantor or by the Sureties, on giving Six Months' Notice, and paying the original Purchase-Money, or on giving seven Days' Notice, and paying half a Year's Annuity in addition to the original Purchase-Money.*

Obligation from three to one.

KNOW ALL MEN *by these presents*, that We [*grantor*], of &c., [*surety*], of &c., and [*other surety*], of &c., are held and firmly bound to [*grantee*], of &c., in the sum of —— hundred pounds of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*], or to his certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, we bind ourselves and each of us, and any two of us (*a*), our and each of our and any two of our (*a*) heirs, executors, and administrators, jointly, and severally, and respectively, firmly by these presents, *Sealed* with our seals: DATED the —— day of ——, in the —— year of the reign of our sovereign lord *George* the *fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith; and in the year of our Lord one thousand eight hundred and ——.

[*503]

Without a joint severance of the obligation, two or more obligors cannot be jointly sued in the life of another joint,

(*a*) Without these words, it seems, an action would not lie against any *two*, in the life of the third; for, as it has been justly observed by Mr. *Justice *Buller*, that if *three* be bound jointly and severally in a bond, the obligee cannot sue *two* of them only, but he must either sue them all, or each of them separately. And he added, though that doctrine has been

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

WHEREAS the above-named [*grantee*] hath contracted and agreed with the above-bounden [*grantor*], for the

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or joint and several obligor, if they plead in abatement, that there is another joint obligor.

several times questioned, yet it has been held good law from the time of Lord Coke: *Streatfield* v. *Halliday*, 3 Durnf. & East, 782: he might have said, from the time of Henry the eighth; for in 27 H. 8, 6 pl. 29, in debt against *two* upon a joint and several bond made by *three*, the Court were of opinion, that the writ was not well brought: and *Fitzherbert*, Justice, directed the counsel for the defendant *to make thereof a plea, so that the other party may have his answer;* which was done. By the words "cannot sue two of them only," are to be understood, if the defendants make a proper plea according to the directions of *Fitzherbert* in the above-cited case; which is, *by pleading in abatement* that there is another joint obligor; and not that the defendant can take advantage of that circumstance in evidence upon *non est factum*, any more in the case of an action against two of three obligors on a joint and several bond, than in the case of one of two obligors on a joint bond. Thus, in *South* v. *Tanner*, 2 Taunt. 254, it was held that if the plaintiff shew on his declaration in debt on bond against two, that the bond is executed by three, it is good matter of plea in abatement. It is at the election of the obligee to consider such a bond either a joint or several one. If he sue one or each of the obligors, he acts upon it as a several bond. If he sue all of them, he proceeds upon it as a joint bond. If he sue *two* only of the three, he still proceeds upon it as a joint bond; for he can only sue one or each of them upon a several bond. If the obligee elect to proceed upon it as a *joint* bond, there is no difference between suing *two* only of *three* joint obligors, and *one* only of *two* joint obligors. In either case, advantage can only be taken of the omission by a plea in abatement. 10 H. 7, 16, *per Keble*, to which *Brian*, C. J. agreed. Bro. *Obligation*, 94. See 12 H. 4, 21 b, pl. 12; Bro. *Dette*, 69, *S. C.*, where this matter was pleaded in abatement, and the writ quashed. This point has been dwelt upon the longer, because a distinction has been sometimes taken between the case, where one only of two or more persons is sued upon a *joint* bond, and *two* only or *three* or more, upon a *joint and several* bond. The case of *Gaulton* v. *Chaliner* and *Wilkinson*, Stafford Lent Assizes, 1794, seems to have been ruled upon this distinction. That was an action of debt against the two defendants, upon a joint and several bond given by them and one *Joseph Gibson*, to which they pleaded *non est factum*. It was proved on the trial, that *Gibson* executed the bond; upon which it was objected, that the action was not properly brought—that it was neither upon a joint nor several bond; and the plaintiff was nonsuited, with leave to move to set the nonsuit aside without costs; and in Easter Term following it was set aside without argument, upon the ground above mentioned. Wms. n. 1 Saund. 291 *e*. *Vide ante*, p. 311, n. (*a*); *post*, Vol. 2, p. 608.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

purchase of one annuity or yearly sum of £—— of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of him the said [*grantor*], at or for the price or sum of £——. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of £——, it was agreed by and between the said [*grantee*] and [*grantor*], that, for securing the payment thereof, the same should be secured by a certain deed of covenants, bearing even date with the above-written bond or obligation, and to be made between the said [*grantor*] and the above-bounden [*sureties*], of the one part; and the said [*grantee*], of the other psrt; AND that the same should also be secured by the bond and warrant of attorney of the said [*grantor*] and [*sureties*], who have agreed to join therein as sureties (*b*),

Recital of contract for purchasing annuity for grantor's life.

Reference to collateral securities.

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(*b*) In Trinity Term, 1818, the following case was determined by the Court of Common Pleas; which, being of considerable importance, not only as connected with annuities, but also as to the re-execution of deeds in general, is stated at length.

A. as surety for B. executed a joint bond and warrant of attorney to secure an annuity to C. After the execution by A. and B., it was discovered that part of A.'s christian name had been omitted in the body of those instruments, and he re-executed them after such name had been inserted, without the knowledge of B. In an action brought against A., in the King's Bench, on the bond, he pleaded a judgment recovered against him and B. The Court of Common Pleas afterwards refused to set aside a joint judgment entered up on the warrant of attorney, on the application of A., as that instrument was not defeated by the insertion of his christian name, and as he had recognized the validity of the judgment, in the action brought against him on the bond.

Mr. Serjt. *Lens*, on a former day in this Term, obtained a rule *nisi*, that the judgment which had been signed in this cause, and the warrant of attorney on which it was founded, might be set aside on an affidavit of the defendant *Radcliffe*, which stated, that in November, 1800, (his name being then *Emilius Henry Delme*, he having since taken the surname of *Radcliffe*), at the request of *Brummell*, joined him in a bond and warrant of attorney, for the purpose of granting an annuity to *Crick*, the testator. That, by the bond, the defendants were expressed to be jointly and severally bound to *Crick*, in the penal sum of 720*l.*, conditioned (after reciting that *Crick* had contracted with *Brummell* for the purchase of an annuity of 60*l.*, to be payable quarterly to *Crick*, *during the lives of both the defendants, or the survivor of them, for 360*l.*, to be secured to him by the bond of *Brummell* (as principal) and *Radcliffe* as his surety, and also by their warrant of attorney for confessing judgment thereon, which judgment was intended to be immediately entered up on record in this Court against them, in an action of debt for

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

for the due and punctual payment of the said annuity of £——. [(c) AND WHEREAS upon the treaty for the pur-

(c) *Vide ante*, p. 460, n. (b).

720*l.*), that if the defendants, or either of them, should pay the annuity, or in case they should think fit to repurchase the same on certain terms therein expressed, the obligation should be void. That by the warrant of attorney, the defendants were jointly and severally to confess judgment on the bond. That several days after both the defendants had executed these instruments, *Radcliffe* was called on by *Crick's* attorney, and requested to re-execute the same, on account of an alteration having been made in his name, which had been written in the bodies of those instruments when they were executed "*Emilius Delme*" only, and that the word "*Henry*," was afterwards added and interlined as part of his name; and that he accordingly re-executed the same, but that they were not re-executed by *Brummell* after such alteration and interlineation; that a joint judgment was entered up in Michaelmas Term, 41 Geo. 3, against both the defendants, by virtue of the above warrant of attorney, and that *Radcliffe* had lately been called on by a *scire facias*, to shew cause why the plaintiff should not have execution of the said judgment.

Under these circumstances, the learned Serjeant contended, that as *Crick* the grantee had omitted to procure the re-execution of the bond and warrant of attorney by *Brummell*, after the alteration made in *Radcliffe's* name, these instruments were not only void as against *Brummell*, but if *Radcliffe* should be compelled to pay the annuity, he could not legally proceed, on those securities, to enforce payment from *Brummell*, and consequently that a joint judgment could not be sustained; that the insertion of the christian name of *Henry*, before *Radcliffe*, after the instruments had been executed both by him and *Brummell*, was a material alteration; and that whether it was so or not, still, as it had been done at the instance of the grantee, it was sufficient to invalidate them. He cited *Pigott's* case, 11 Co. 27, and insisted that as *Brummell* was at all events discharged by the alteration in the warrant of attorney, the joint judgment could not be sustained against *Radcliffe* alone.

Mr. Serjeant *Vaughan*, and Mr. Serjeant *Pell*, now shewed cause on an affidavit of the solicitor, who prepared the securities; that they were [*506] executed on the 5th of November, 1800, and that judgment was *entered up in Michaelmas Term following; that previous to the annuity being enrolled, it was observed, that *Radcliffe* had signed his name at the foot of the bond and warrant of attorney "*E. H. Delme;*" that the solicitor afterwards learnt, that he had the name of *Henry* as well as *Emilius*, and he therefore caused the former to be inserted in the body of the securities,

chase of the said annuity or yearly sum of £ ——, it was likewise agreed, that all costs, charges, and expenses, at-

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, RE-PURCHASABLE.

between the words *Emilius* and *Delme*, and which *Radcliffe* afterwards re-executed. It was further sworn, that in the last *Michaelmas* Term, an action was commenced in the King's Bench, against *Radcliffe*, on the bond, to which he pleaded a plea of judgment recovered by *Crick* in his life-time, against him jointly with *Brummell*, on which issue was joined; and as the roll was not carried in on entering up the judgment, nor at the time the plea was pleaded, *Radcliffe* caused an entry of a judgment on the bond, as directed by the warrant of attorney, and on a day being given to produce the record, an office copy of that entry was produced, and he obtained judgment. It was therefore submitted, that *Radcliffe* had recognized the validity of the judgment which had been entered up before the alteration was made in the securities; at all events, he cannot now turn round and say that this is an invalid judgment, when he availed himself of it as an existing judgment to defeat the action brought against him on the bond. If there had been any legal objection to the judgment, he should then have availed himself of it; and it is now too late for him to dispute the validity of the securities on which it was founded.

Mr. Serjeant *Lens*, and Mr. Serjeant *Best*, in support of the rule, observed, that this being a legal objection, the action brought on the bond in the Court of King's Bench afforded no answer to it. The defendant *Radcliffe* is merely a surety for *Brummell*. If therefore his remedy be lost against his principal, he is entitled to this application, to which alone he can have resort. The alteration in the bond and warrant of attorney has destroyed their effect as joint securities, and the re-execution has rendered them altogether different instruments. Although it might be unnecessary, still, having been re-executed, the principal should have been applied to, to re-execute also. The securities, as executed by both parties, were joint and several, and as the alteration was afterwards made at the instance ot the grantee, and re-executed by one only, it destroyed the joint part of those securities; and therefore having vacated those instruments as to one part, they cannot be used for the purpose of sustaining a judgment entered up against both.

*Lord Chief Justice *Gibbs*.—This is an application to set aside a judgment, and the warrant of attorney on which it was entered up. This latter instrument was given as a collateral security to an annuity bond, in which the defendant *Brummell* was the principal, and *Radcliffe*, who now makes this application, his surety. At the time the bond and warrant of attorney were executed, the grantee was not aware that *Radcliffe* was called "*Henry*," as well as "*Emilius*," and he did not discover it until he saw his signature at the foot of those instruments. He was then fearful that the warrant of attorney might prove defective, and therefore procured *Radcliffe* to re-execute it, having previously caused an alteration to be

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BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, RE-PURCHASABLE.

tending the said contract, and for preparing and perfecting the several securities for the same, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS the said [*grantee*] hath, on the day of the date of the above-written bond or obligation, paid to the said [*grantor*] the said sum of £——, which he the said [*grantor*] doth hereby admit and acknowledge.

Grantor to pay expenses.

Recital of paying consideration.

A deed mentioning only one christian name, when the party has two, is binding on him.

made throughout the body of it, by interlining and inserting the word "*Henry*," between "*Emilius*," and "*Delme*." In point of fact, the warrant of attorney was perfect, without this alteration; but there can be no doubt, but that judgment may now be entered up on it, *Radcliffe* himself not only having consented to such alteration, but re-executed the instrument;—besides, in an action on the bond brought against him in the Court of King's Bench, he pleaded a judgment recovered by the testator against himself and *Brummell*, thereby not only recognizing the validity of the judgment, but, by making use of it, defeating that action; and after that, he makes this application, whereby he seeks to set it aside. Under these circumstances, the Court are of opinion, that they cannot do this; first, because the nature of the securities was not defeated by the insertion of the word "*Henry*," to which alteration *Radcliffe* himself was a party; and secondly, because he afterwards recognized the judgment, as being legally entered up, and availed himself of it in the action brought against him on the bond in the Court of King's Bench.—Rule discharged. *Coke* v. *Brummell*, 2 Moore, 495.

New stamps not necessary on merely rectifying a mistake in the name of one of the parties.

Suggestion as to alterations in deeds.

According to *Cole* v. *Parkin*, 12 East, 471, new stamps do not appear to be necessary on such an alteration as the above. [And it should seem, that where a deed is altered after its execution by some of the parties, *in regard to whom the alteration is immaterial*, its validity is not thereby affected, *Doe* d. *Lewis* v. *Bingham*, 4 Barn. & Ald. 672; *Hall* v. *Chandless*, 4 Bingh. 123]. However, as the subject of stamps on deeds, &c. is intended to be discussed separately in another part of this work, it is only necessary at present to suggest, as a caution, the impropriety of making any alteration whatever in a deed after it is executed. In the above case, although the alteration did not destroy the validity of the deed, yet the parties must have incurred considerable expense in consequence of that alteration. It might have so happened in the above case, that the number of words, with the addition of the interlineations, would make a greater number of words than are allowed according to the stamp used; in which case a new stamp on the deed would most certainly have been necessary. So, if a memorial of an annuity deed, or a bargain and sale, be not enrolled within the limited time, and the parties make a new date and re-execute the deed, in order to get it enrolled, it is clear a new stamp would be requisite, because it would operate as a new deed.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

Condition, for payment of annuity,

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or their, any, or either of their heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], *One* annuity or yearly sum of £—— of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the above-written bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*grantor*], or the said [*sureties*], or either of them, their, or either of their heirs, executors, or administrators, should well and truly *pay [*509] or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any quarterly payment of the said annuity or yearly sum of £—— shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of £—— shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of £——, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of the said annuity or yearly sum of £—— should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of £—— as shall happen to be next and immediately preceding the day of the decease of the said [*grantor*], to the day of his decease, *Then* the above-written bond or obligation shall be void and of no effect (*d*).

and proportional part.

(*d*) In the late case of *Eyre* v. *Bartrop*, 3 Madd. Rep. 221, it was

Giving time to

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AND WHEREAS upon the treaty for the purchase of the *said annuity or clear yearly sum of £—— hereinbefore

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held, that giving time to the principal, the grantee of an annuity, exonerates the surety from past, as well as future, arrears; the following were the circumstances:

Recital of contract for repurchase.

In 1819, *E. V. Eyre*, the brother of the plaintiff, granted an annuity to *R. B. Skurray* and *R. Skurray*, of 217*l.* 14*s.* during his life, and the plaintiff joined with him in the grant, as a surety, for the payment of the same, quarterly. In the annuity deed it was provided, that *E. V. Eyre*, or the plaintiff, should, on seven days' notice, be at liberty to redeem the annuity on the payment of 1,384*l.* 8*s.* 6*d.*, which was something more than the purchase-money. The annuity was further secured by demise to *W. H. Skurray*, a trustee, for ninety-nine years, of certain real property, by *E. V. Eyre*, and a bond and judgment of *E. V. Eyre* and the plaintiff.

The principal, the grantee of an annuity, exonerates the surety from past, as well as future, arrears.

Some time after, this annuity was, by deed, 12th January, 1810, assigned by *R. B. Skurray*, and *R. Skurray* to the defendant, together [*510] *with the benefit of the securities, and the defendant entered into a new agreement with *E. V. Eyre;*—and by indenture, 12th January, 1810, reciting the before-mentioned grant of the annuity; and also another indenture, 22d July, 1812, under which the defendant was entitled to another annuity of 125*l.* granted by *E. V. Eyre;* and after reciting that all arrears of the annuities had been paid, and that defendant was willing and had consented, to allow to said *E. V. Eyre* new and more advantageous terms of repurchasing said first-mentioned annuity, and also the subsequent annuity;—the *Skurrays*, with the privity of *E. V. Eyre*, who was a party to the deed, assigned the annuity of 217*l.*, and the securities, to the defendant, and a new trustee of the defendant's, subject to such right of repurchase as was reserved in the grant of that annuity; " and it was thereby declared and agreed, by and between defendant and *E. V. Eyre*, his heirs, &c., that defendant, his heirs, &c., shall not, nor will, at any time thereafter, until the expiration of five years from the date of the deed, or until the death of *Edward Eyre*, the father of *E. V. Eyre* (which should first happen), demand or sue for either of the said annuities of 217*l.* 14*s.* and 125*l.* or any part thereof, or for any payment for or on account of either of the said annuities;" and it was further agreed that the said annuities should, on certain conditions, be redeemable by *E. V. Eyre*, on more favourable terms than those originally stipulated for in the grants of the annuities.

Edward Eyre, the father, survived the five years, and was living, and the annuities were not redeemed, or the arrears paid to the defendant.

mentioned, it was mutually agreed by and between the said [*grantor*], [*sureties*], and the said [*grantee*], that

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E. V. Eyre being pressed for the arrears of the annuity, the defendant, by agreement, 23d February, 1815, consented to receive them by instalments; the payment of them to be secured by a judgment acknowledged by *E. V. Eyre*.

The plaintiff was not a party to the deed of the 12th January, 1810, nor concurred in its provisions; nor was he a party to the agreement of the 23d February, 1815.

The instalments not being paid, the plaintiff was called upon to pay the arrears of the first-mentioned annuity, and the defendant threatened to take out execution against him upon the judgment; but the plaintiff contended, that in consequence of the deed of January, 1810, and the agreement in 1815, he, as surety, was discharged.

The *prayer* of the bill was, that it might be declared that the plaintiff, as a surety for the payment of the annuity according to the terms of the indenture of the 1st May, 1809, became released and discharged therefrom by the effect of the subsequent dealings and transactions be-
*tween the defendant and *E. V. Eyre* respecting the same; and that the [*511]
defendant might be restrained from issuing execution on the judgment, and from commencing an action, &c., or from otherwise proceeding in respect of the said annuity.

An injunction was obtained, for want of an answer, until further order.

A motion was now made to dissolve the injunction upon the coming in of the answer.

The *answer* admitted the facts stated in the bill, except that it did not admit that the plaintiff was a surety only; but notice was given to produce the original deed, on the face of which it appeared that he was only a surety.

Mr. *Bell*, and Mr. *Wilbraham*, in support of the motion:

The plaintiff is a mere surety, and the effect of giving time to the principal, without the consent of the surety, has exonerated him from all claims in respect of past or future arrears of the annuity. They cited *Rees* v. *Berrington*, 2 Ves. jun. 540; and see *Ex parte Gifford*, 6 Ves. 809, and 18 Ves. 28, and *Richard Burke's* case, cited by Lord *Eldon* in *English* v. *Darby*, 2 Bos. & Pul. 62, who was a co-surety for an annuity: when it was held, that the grantee, having given time to the principal, could make no demand against the surety.

Sir *S. Romilly*, and Mr. *Treslove*, *contra*.—It may be admitted as a general rule, that time given to the principal discharges the surety; but it only discharges him in respect of what accrues during the time given to the principal. In this case, the five years given to the principal, by the

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they, the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators of the said [*sureties*], should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of £——, upon giving unto the said [*grantee*], his executors, administrators, or assigns, six calendar months' notice in writing of such their or either of their intention, and upon paying unto the said [*grantee*], his executors, administrators, or assigns, at the expiration of the said six calendar months, the full sum of £—— of lawful money of Great Britain and Ireland, being the original purchase-money, as and

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deed of the 12th January, 1810, and by the agreement in 1815, discharged the surety from all claims in respect of the annuity during that period, but not from arrears accruing afterwards. The grantee might let the annuity run in arrear: that would not exonerate the surety†. Suppose two, one as surety, enter into a bond for the payment of the principal sum in two years, with interest in the mean time, and the obligee afterwards agrees not to call for the interest until the end of two years: this agreement would exonerate the surety from *the payment of the interest; but as to the principal, he would not be discharged. It is a legal question, and the plaintiff should be left to his remedy by defence at law.

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Sir *John Leach*, Vice-Chancellor: The defendant is proceeding to execution upon the judgment, and the plaintiff comes here for equitable relief. It could not be denied, that if by any arrangement between the creditor and the debtor, the situation of the surety is altered, that he is thereby discharged; but it is said, that the situation of the surety is here only partially altered during the five years; and that in respect of subsequent payments it remains the same. I am of opinion, however, that the deed of January, 1810, and the agreement of February, 1815, and the change in the terms of the redemption, have either directly, or by their consequences, wholly altered the situation of the surety, and that he is thereby wholly discharged. Motion refused. [As to the rights and obligations flowing from the relation of principal and surety, *vide post*, Vol. 3, p. 192, *& seq.*].

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† It has been held at law, that laches in not calling upon the principal so soon as they might have done if the accounts had been properly examined from time to time, is no estoppel at law, whatever remedy there may be in equity. *Trent Navigation* v. *Harley*, 10 East, 48. If sureties, co-obligors, *call upon the creditor to sue*, which he forbears doing, the loss, it seems, would fall upon the creditor. *Ex parte Mure*, 2 Cox, 74.

for the consideration of such repurchase of the said annuity; together with all arrears which should be due on the said annuity; and a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same: *Or* that they the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators of the said [*sureties*], should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of £——, upon giving *unto the said [*grantee*], his executors, administrators, or assigns, seven days' notice in writing of such their or either of their intention, and upon paying unto the said [*grantee*], his executors, administrators, or assigns, at the expiration of the said seven days, the full sum of £——, being the original purchase-money, and two quarterly payments of the said annuity, of lawful money of Great Britain and Ireland, as and for the consideration of such repurchase of the said annuity; together with all arrears which should be due on the said annuity; and a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same.

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Now *it is hereby Declared*, That in case the said [*grantor*], [*sureties*], or either of them, or the heirs, executors, or administrators of the said [*sureties*], should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of £——, and of such their or either of their intention should give unto the said [*grantee*], his executors, administrators, or assigns, six calendar months' notice in writing, that he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the end of six calendar months from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever, that shall be due for the arrears of the said annuity, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of £——, as and in full for the repurchase of the said annuity or yearly sum of £——: Or in case the said [*grantor*], [*sureties*], or either of them, or the heirs, exe-

Declaration, enabling grantor or sureties to repurchase, on giving six months' notice;

or on paying half a year's annuity in lieu of notice.

BOND, WITH COLLATERAL SECURITIES, AND TWO SURETIES, REPURCHASABLE.

cutors, or administrators of the said [*sureties*], should at any time hereafter be minded and desirous of repurchasing the said annuity or clear yearly sum of £——, and should give seven days' notice in writing of such their or either of their intention unto the said [*grantee*], his executors, administrators, or assigns, that he the said [*grantee*], his executors, administrators, *or assigns, shall and will, at the end of seven days from the time such notice shall be given as aforesaid, on receiving all and every sum and sums of money whatsoever that shall be due for the arrears of the said annuity, together with a proportional part thereof, from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of £——, as and in full for the repurchase of the said annuity or yearly sum of £——. And on receiving either of the said sums, as the case may happen, and all arrears of the said annuity or clear yearly sum of £——, and such proportional part thereof as aforesaid, if such repurchase should be made by the said [*grantor*], shall and will deliver the above-written bond or obligation to the said [*grantor*], to be cancelled; *And* then, and in such case, the said annuity or yearly sum of £—— shall cease, determine, and be no longer paid or payable; *But* if such repurchase should be made by the said [*sureties*], or either of them, or by their or either of their heirs, executors, or administrators, the said annuity or yearly sum of £——, shall continue for the benefit of the person or persons who shall repurchase the same; and the same annuity, and the several securities for the same, shall be assigned, or otherwise assured by the said [*grantee*], his executors, administrators, or assigns, unto the person or persons repurchasing the same, or otherwise as he, she, or they shall direct or appoint; *subject* to the like right of the said [*obligor*], to repurchase the same.

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If repurchase made by sureties, annuity to continue for their benefit.

SEALED AND DELIVERED by the above named [*obligor*], [*sureties*], and [*obligee*] (*e*), in the presence of

(*e*) *Vide ante*, p. 470, n. (*d*); 483, n. (*a*).

BOND *for securing an* ANNUITY *to* TWO *or more, as* JOINT TENANTS, *for the Grantor's Life; collaterally secured by an Indenture of even Date, and two Warrants of Attorney for confessing Judgments in England and Ireland; with Power to repurchase. A short Form.*

BOND TO TWO JOINT TENANTS, COLLATERALLY SECURED, AND REPURCHASABLE.

KNOW ALL MEN *by these presents*, That I [*obligor*], of &c., am held and firmly bound to [*obligees*], of &c., in the sum of [*double the purchase money*] of lawful money of Great Britain and Ireland, to be paid to the said [*obligees*], or to their certain attorney, executors, administrators, or assigns; *For* which payment to be well and truly made, I bind myself, my heirs, executors, and administrators, and every of them, firmly by these presents, *Sealed* with my seal: DATED this —— day of —— in the —— year of the reign of our sovereign lord *George* the *fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord one thousand eight hundred and ——.

Obligation from one to two or more, as joint tenants.

THE CONDITION of the above-written bond or obligation is such, that if the above-bounden [*obligor*] should henceforth, during the natural life of him the said [*obligor*], well and truly pay or cause to be paid unto the above-named [*obligees*], their executors, administrators, or assigns, *One* annuity or clear yearly sum of £—— of lawful money of Great Britain and Ireland, by equal quarterly payments, on the —— day of ——, the —— day of *——, the —— day of ——, and the —— day of ——, in every year, the first of such quarterly payments to be made on the —— day of —— next ensuing the date of the above-

Condition for paying annuity,

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BOND TO TWO JOINT TENANTS, COLLATERALLY SECURED, AND REPURCHASABLE.

written bond or obligation: And in the event of the death of the said [*obligor*] on any other day than one of the said quarterly days of payment, if the executors or administrators of him the said [*obligor*] should well and truly pay or cause to be paid to the said [*obligees*], their executors, administrators, or assigns, a proportional part of the current quarterly payment of the said annuity, in respect of the interval which shall have elapsed from the last preceding quarterly day of payment, up to and until, and inclusively of, the day of such decease as last aforesaid; *All* the said payments to be made at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, between the hours of ten and twelve of the clock in the forenoon, without any deduction or abatement thereout for taxes or otherwise: (*Being* the same annuity, and the same proportional part thereof, as are respectively collaterally secured by two several warrants of attorney, bearing even date with the above-written bond or obligation, for confessing judgments against the said [*obligor*] in England and Ireland; *and also* by an indenture, bearing even date with the above-written bond or obligation, and made between the said [*obligor*], of the first part; [*obligees*], of the second part; and [*trustee of term*], of &c., of the third part:) Or if the said [*obligor*] should redeem or repurchase the said annuity upon such terms, and in such manner, as in the said indenture is expressed in that behalf, *Then*, and in either of the said cases, the above-written bond or obligation shall be void; but otherwise the same shall remain in full force and virtue.

and proportional part.

Reference to warrants of attorney for confessing judgments in England and Ireland; and to grant and demise.

Repurchasable.

BOND, FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

BOND *for securing an* ANNUITY *during the Lives of* TWO PERSONS *and the Life of the* SURVIVOR *of them; collaterally secured by Bond, Warrant of Attorney, and Indenture; and repurchasable on replacing Stock, sold by the Obligee for purchasing the Annuity.*

Obligation.

KNOW ALL MEN *by these presents,* that I, [*obligor*], of &c., *(common form of obligation, from one to one, ut ante,* p. 459.)

Recital of contract for purchasing annuity for two lives, and the life of the survivor.

WHEREAS the above-named [*obligee*] hath contracted and agreed with the above-bounden [*obligor*], for the purchase of one annuity or yearly sum of —— hundred pounds of lawful money of Great Britain and Ireland, to be paid to the said [*obligee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of the said [*obligee*], and [*wife*] his wife, and the life of the survivor, at or for the price or sum of —— thousand pounds.

Reference to collateral securities.

AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— hundred pounds, it was agreed by and between the said [*obligor*] and [*obligee*], that for more effectually securing the payment thereof unto the said [*obligee*], his executors, administrators, and assigns, the same should be secured by a certain indenture, bearing even date with the above-written bond or obligation, and made between the said [*obligor*], of the first part; the said [*obligee*], of the second part; and [*trustee*], of &c., of the third part; AND that the same should be also secured by the bond and warrant of attor*ney of the said [*obligor*]. [*518]

Recital of agreement as to expenses.

[(*a*) AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— hundred pounds,

(*a*) This is an unnecessary recital. *Vide ante,* p. 460, n. (*b*).

BOND, FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE, ON REPLACING STOCK.

it was likewise agreed, that all costs, charges, and expenses, attending the said contract, and for preparing and perfecting the several securities for the same, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*obligor*].] AND WHEREAS the said [*obligee*] hath, on the day of the date of the above-written bond or obligation, paid to the said (*b*) [*obligor*] the said sum of —— thousand pounds, which he the said [*obligor*] doth hereby admit and acknowledge.

Recital of paying consideration.

Condition, payment of annuity,

NOW THE CONDITION of the above-written bond or obligation is such, that if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, for and during the natural lives of them the said [*obligee*] and [*wife*], his wife, and the life of the survivor of them, ONE annuity, or yearly sum of —— hundred pounds of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the day of the date of the above-written bond or obligation:

and proportional part.

AND ALSO, if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns, of the said [*obligee*], in case the survivor of them the said [*obligee*] and [*wife*], his wife, should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— hundred pounds shall become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said *annuity or yearly sum shall have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— hundred pounds,

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(*b*) *Vide ante*, p. 485, n. (*b*).

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to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the survivor of them the said [*grantee*] and [*wife*], his wife; But in case any quarterly payment of such annuity or yearly sum of —— hundred pounds should have become due at the time of the decease of the survivor of them the said [*grantee*] and [*wife*], his wife, then from such of the said quarterly days of payment of the said annuity or yearly sum of —— hundred pounds as shall happen to be next and immediately preceding the day of the death of the survivor of them the said [*grantee*] and [*wife*], his wife, to the day of such survivor's decease, *Then* the above-written bond or obligation shall be void and of no effect.

Recital of agreement for repurchasing annuity on replacing stock sold out by the obligee for the purchase.

And [whereas upon the treaty for the purchase of the said annuity or clear yearly sum of —— hundred pounds, hereinbefore mentioned, it was mutually agreed by and between the said [*obligor*] and [*obligee*], that the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be at liberty to repurchase the said annuity or clear yearly sum of —— hundred pounds, upon giving unto the said [*obligee*], his executors, administrators, or assigns, seven days' notice in writing of such his or their intention, and upon transferring into the name of the said [*obligee*], or into the name of his executors, administrators, or assigns, for his and their own use and benefit, —— thousand pounds Consolidated Three Pounds *per centum* Annuities; *And* upon paying unto the said [*obligee*, his executors, administrators, or assigns, all arrears which should be due on the said annuity; *And* a proportional part thereof, from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same.

Declaration of agreement, enabling the obligor to repurchase annuity on replacing stock.

Now] it is herby Declared, That in case the said [*obligor*], his heirs, executors, or administrators, should at any time hereafter be minded and desirous of repur-
*chasing the said annuity or yearly sum of —— hundred pounds, and of such his or their intention should give unto the said [*obligee*], his executors, administrators, or

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assigns, seven days' notice in writing; *And* should, at the expiration of the time to be mentioned in such notice, at his or their own costs and charges, transfer into the name of the said [*obligee*], or into the name of his executors, administrators, or assigns, to and for his and their own use and benefit, —— thousand pounds Consolidated Three Pounds *per centum* Annuities; *And* should well and truly pay or cause to be paid unto the said [*obligee*], his executors, administrators, or assigns, all such sums of money as at the time of repurchasing the said annuity shall be due for the arrears thereof; together with a proportional part of the same annuity [from the last day of payment preceding such repurchase], up to and including the day of repurchasing the same, as and in full for the repurchase of the said annuity or yearly sum of —— hundred pounds, *Then* and in such case he the said [*obligee*], his executors, administrators, or assigns, shall and will deliver the above-written bond or obligation to the said [*obligor*], his heirs, executors, or administrators, cancelled, or to be cancelled; *And* the said annuity, or yearly sum of —— hundred pounds, shall cease, determine, and be no longer paid or payable.

SEALED AND DELIVERED by the above-named [*obligor*] and [*obligee*] (*c*)], in the presence of

(*c*) *Vide ante*, p. 470, n. (*d*).

BOND *for securing an* ANNUITY, *in Consideration of a* DEBT *due on Bond and Simple Contract, and of a further Sum paid to the Grantor; the* ANNUITY *to be further secured by a Warrant of Attorney to confess Judgment.*

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

KNOW ALL MEN *by these presents*, That I [*obligor*], of &c., am held &c., *(common form of obligation, from one to one, ut ante,* p. 459.)

Obligation.

WHEREAS the above-bounden [*obligor*], on the day of the date of the above-written obligation, is and stands justly and truly indebted unto the above-named [*obligee*], in the full and just sum of —— pounds, as well for monies due and owing upon and secured by a certain bond or writing obligatory entered into and executed by the said [*obligor*], to the said [*obligee*], bearing date the —— day of —— one thousand eight hundred and ——, in the penalty of —— pounds; conditioned for payment by the said [*obligor*], his heirs, executors, or administrators, unto the said [*obligee*], his executors, administrators, or assigns, of the sum of —— pounds, with interest thereon, on the —— day of ——, which was in the year one thousand eight hundred and ——; as also for divers and sundry sums of money lent and advanced, paid, laid out, and expended by the said [*obligee*], to and for the use and on the account of the said [*obligor*], which the said [*obligor*] doth hereby admit, declare, and acknowledge. AND WHEREAS the said [*obligee*] hath contracted and agreed with the said [*obligor*], for the purchase of one annuity or clear yearly sum of —— pounds of lawful money of Great Britain and Ireland, pay*able quarterly in manner hereinafter mentioned, [*522] free from taxes and other deductions, during the life of him the said [*obligee*], as well in consideration of the said

Recital of debt.

Reference to bond.

Reference to debt on simple contract.

Recital of agreement for purchase of annuity.

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

sum of —— pounds now due and owing from the said [*obligor*] to the said [*obligee*] as aforesaid (*a*), as of the

A *bonâ fide* debt, or sum advanced for grantor's use, a good consideration for an annuity.

(*a*) A debt *antecedently* contracted is a good consideration *in money*, within the annuity act, because it is not necessary, nor was it ever intended, that the money should be actually told down at the time of the grant. If it be a *bonâ fide* transaction, and the money be really paid to the grantor, or to his use, it satisfies the words and meaning of the act. *Ex parte Fallon* and Wife, 5 D. & E. 286; *Symmons* v. *Mortimer*, Ibid. 139 †. So, money lent and paid at different times for the education and advancement of the grantor, is a good consideration for the grant of an annuity within the 17 Geo. 3, c. 26, s. 3, and such a consideration is sufficiently expressed in the deeds for securing the annuity under the description of "money lent and advanced, and also paid, laid out, and expended to and for the maintenance, education, and advancement in the world of the grantor." Lord *Kenyon*, C. J., said, If there had been any doubt whether the consideration money had or had not been paid, we would have directed an issue to try that fact: but it appears beyond all doubt that money has been advanced by the plaintiff's wife before her marriage, to the use of the defendant, to a larger amount than the sum stated as the consideration of granting this annuity. Whether we consider the words of the act of Parliament, or the decided cases, I think there is no weight in either of the objections taken to this annuity. In the case *Ex parte Fallon*, we laid down a rule which has since been adopted in the Court of Common Pleas, that the consideration money of an annuity need not be paid down in monies numbered at the time. In that case we said that one great object of the legislature, in passing the act, was to prevent goods being forced on the necessitous instead of money, at a price much beyond the real value: but the Legislature did not intend to prohibit a debtor granting an annuity for a debt fairly and honestly contracted, which the debtor, perhaps, may have no means of paying, but by granting an annuity. In the present case it appears that the annuity was granted for the best of considerations; the defendant not having the means of educating himself, but being desirous of being placed in a situation in which he might gain an honourable livelihood, applied to the plaintiff's wife to advance money for the purpose of his education: she advanced 1,900*l.* for that purpose, at different times, and afterwards consented to take an annuity as for a consideration of 1,400*l.* only; and when the defendant gave instructions for the annuity-deeds, he admitted that all this money had been advanced for him. Notwithstanding all this, it is now made a serious question in a

[† These cases arose under the repealed stat. 17 Geo. 3, but the principle of them seems to be applicable to the act of 53 Geo. 3, now in force.]

further *sum of —— pounds; THE payment of which said annuity or clear yearly sum of —— pounds is to be secured by the above-written bond or obligation, and by a warrant of attorney to confess judgment thereon, to be forthwith entered up of record in his Majesty's Court of King's Bench at Westminster: WHICH said sum of —— pounds he the said [*obligee*] hath paid unto the said [*obligor*], at or before the sealing and delivery of the obligation above-written; the receipt and payment whereof accordingly, the said [*obligor*] doth hereby acknowledge; AND the said [*obligee*] hath delivered to the said [*obligor*] the aforesaid bond or writing obligatory, dated the said —— day of ——, one thousand eight hundred and ——, to be cancelled; which the said [*obligor*] doth also hereby acknowledge.

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

To be secured collaterally by warrant of attorney to confess judgment.

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Recital of cancelling bond.

Court of law, whether these deeds are a good security for the annuity; I think it would be a reproach to the administration of justice to put a construction on this act of Parliament so contrary to the intention of the Legislature, as well as to common honesty. In my opinion the transaction is fairly stated in the memorial, and therefore the rule must be discharged with costs: and in this opinion the other Judges concurred. *Kelfe* v. *Ambrosse*, 7 D. & E. 551.

If the consideration for an annuity be partly a debt *antecedently* due for goods sold, and the residue of the consideration be money paid at the time of executing the deed; and the annuity be set aside for informality in registering the memorial, the grantee may recover back the whole consideration. *Shove* v. *Webb*, 1 D. & E. 732. But the Court intimated a very clear opinion, that if any part of the consideration had been for goods delivered *at the time*, which by agreement were to stand for so much money as the value put upon them, then the question would have fairly arisen, whether, as this was in the teeth of the act of Parliament, and one of the mischiefs the act meant to remedy, as great frauds were practised in palming goods upon the purchaser [*read* grantor] of the annuity, which were not of *half*† the estimated value: then, the Court said, the question would fairly have arisen, whether, if the securities were set aside, the law would have raised any implied promise to pay the value of the goods; and the maxim might have been urged *quod ex maleficio non oritur contractus*.

Previous *bonâ fide* debt, consideration for granting annuity, may be recovered in *assumpsit*, on annuity being set aside for informality in memorial.

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† This is a colloquial expression, and is not to be understood literally.

BOND FOR ANNUITY, IN CONSIDERATION OF DEBT, &c.

Condition, payment of annuity, &c. quarterly,

NOW THEREFORE THE CONDITION of the above-written obligation is such, that if the above-bounden [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the above-named [*obligee*], or his assigns, during the term of his natural life, *One* annuity or clear yearly sum of —— pounds of lawful money of Great Britain, free from taxes and all other deductions whatsoever, at and upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in each and every year, by even and equal portions; the first payment thereof to begin and be made upon the —— day of —— next ensuing the day of the date of the above-written obligation: AND ALSO if the said [*obligor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*obligee*], such a proportional part of the aforesaid annuity or yearly sum of —— pounds as shall accrue and become due, either from the date of the above-written obligation, or from the last quarterly day of payment thereof in the life-time of the said [*obligee*], as the case may be, up to and including the day of his decease; *Then* the above-written obligation shall be void, and of no effect [; *But* if default should be made of or in payment of the said annuity or yearly sum of —— pounds, or any part thereof, on any of the said days appointed for payment thereof, or in payment of such proportional part thereof as aforesaid, *Then* the said obligation shall be and remain in full force and effect].

and proportional part thereof to obligee's decease.

SEALED AND DELIVERED, in the presence of }

COVENANT *for Payment of an* ANNUITY *collaterally secured by Bond, in consideration of resigning the* BUSINESS *of a Surgeon and Apothecary.*

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

THIS INDENTURE, made the —— day of ——, [in the —— year of the reign of our Sovereign Lord *George* the *Fourth*, by the grace of God, of the united kingdom of Great Britain and Ireland king, defender of the faith, and] in the year of our Lord one thousand eight hundred and ——; BETWEEN [*grantee*], of ——, in the county of —— Parties.
——, [*surgeon and apothecary*], of the one part; and [*grantor*], of ——, in the county of ——, [*surgeon and apothecary*], of the other part. WHEREAS the said [*grantee*] hath, for many years past, exercised and carried on the trade or business of a surgeon and apothecary, and hath established a considerable practice and connexion in the said trade or business at —— aforesaid. Recital of carrying on business.
AND WHEREAS the said [*grantee*] hath agreed with the said [*grantor*] to resign to or in favour of the said [*grantor*], the said practice and connection in the said trade or business so established by him as aforesaid, in consideration of an annuity or yearly sum of —— hundred pounds, to be paid by the said [*grantor*], his heirs, executors, or administrators, to the said [*grantee*] and his assigns, during his life, at the times hereinafter mentioned. Recital of agreement to resign in consideration of annuity for life.
AND WHEREAS in pursuance of the said agreement on the part of the said [*grantor*], he the said [*grantor*] hath, by his bond or obligation (*a*) in writing under his hand and seal, bearing even date herewith, become bound unto the said [*grantee*], in the penal sum of —— thousand pounds, with a condition thereunder-written, making the same void if the Recital of collateral bond for securing annuity;

(*a*) *Vide* the form of the bond, *ante*, p. 493.

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

said [*grantor*]. his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*] or his assigns, during the term of his natural life, *One* annuity or yearly sum of —— hundred pounds of lawful money of Great Britain, free from taxes, and without any deduction whatsoever, by half yearly payments, at or on the days or times following, that is to say; the —— day of ——, and the —— day of ——, in each and every year, by even and equal portions, the first half yearly payment thereof to begin and be made on the —— day of —— next ensuing the date of the said bond or obligation, and of these presents: *And also* if the said [*grantor*], his heirs, executors, or administrators should, within twenty days next after the decease of the said [*grantee*], well and truly pay, or cause to be paid, unto the executors, administrators, or assigns of the said [*grantee*], a proportional part of the said annuity for the time which at his decease should have elapsed of the half yearly payment thereof then growing due. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement on the part of the said [*grantee*], and also for and in consideration of the said annuity or yearly sum of —— hundred pounds, hereinbefore mentioned to be secured to the said [*grantee*] by the bond of the said [*grantor*], as aforesaid, *He* the said [*grantee*], *doth* by these presents, so far as in him lieth, grant, resign, and yield up unto the said [*grantor*], the liberty or privilege of carrying on and conducting the trade or business of a surgeon and apothecary, heretofore practised and carried on by him the said [*grantee*], in or within the (liberties of London and Westminster), and the adjacent parts thereof, by and in the room and stead, and as the successor, of the said [*grantee*], and all benefit, profits, emoluments, and advantage, to arise or accrue, or be raised or derived, by or from the same. AND THE SAID [*grantee*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantor*], his executors and administrators, in manner following, that is to say; That he the said [*grantee*] shall and will, as soon as conveniently may be, introduce and recommend the said [*grantor*] to all the patients *of or persons employing the

and proportional part.

Testatum.

Resignation of business.

Covenant by grantee, to introduce and recommend grantor to his employers.

said [*grantee*], in his business or profession, as aforesaid: AND shall and will use his utmost and best endeavours to procure the said [*grantor*] to be employed by such persons, in like manner as he the said [*grantee*] hath heretofore been employed by them in his said trade or business of a surgeon and apothecary, as aforesaid: AND that he the said [*grantee*] shall not, nor will, at any time or times hereafter, use, exercise, or carry on, practise, or profess the said trade or business of a surgeon or apothecary, or either of them, within the (liberties (*b*) of London and Westminster, or either of them), or within (ten) English miles from the same (liberties, or either of them), without the leave or license of the said [*grantor*], first had and obtained in writing: AND shall not, nor will at any time hereafter, recommend, or procure to be recommended, any other person or persons whomsoever than the said [*grantor*], to any person or persons at this time employing him the said [*grantee*], in his said trade or business of a surgeon and apothecary, or either of them. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*] and his assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, shall and will at all times hereafter, during the life of the said [*grantee*], well and truly pay or cause to be paid unto the said [*grantee*] or his assigns, the said annuity or yearly sum of —— hundred pounds, on the days or times in the said recited bond or obligation expressed and appointed for payment thereof; together with such proportional part thereof as aforesaid, unto the executors, administrators, or assigns of the said [*grantee*], according to the true intent and meaning of the said bond or obligation, and of these presents. IN WITNESS whereof the parties above named have hereto (interchangeably) set their hands and seals, the day and year first above written.

COVENANT FOR PAYING ANNUITY FOR SURRENDERING BUSINESS.

And endeavour to procure his being employed by them.

Not to practise within ten miles.

Not to recommend any other person.

Covenant by grantor to pay annuity.

In witness, &c.

(*b*) *Vide ante*, p. 172, n. (*d*).

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

COVENANT *to pay an* ANNUITY *for the* GRANTOR'S LIFE, *collaterally secured by Bond; and* COVENANT *to appear at* INSURANCE *Office, or send Certificates of State of Health; with* DEFEAZANCE *on* JUDGMENT, *to be entered up by virtue of Warrant of Attorney.*

THIS INDENTURE, made the —— day of ——, [in the —— year &c., *George* the *Fourth*, &c. and] in the year of our Lord one thousand eight hundred and ——;

Parties.

BETWEEN [*grantor*], of ——, in the county of ——, [*esquire*], of the one part; and [*grantee*], of ——, in the county of ——, [*draper*], of the other part.

Recital of contract.

WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of —— pounds of lawful money of Great Britain, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of the said [*grantor*], and to be secured in manner hereinafter mentioned, at or for the price or sum of —— hundred pounds.

Recital that grantor was to pay expenses.

[AND on the treaty for the purchase of the said annuity, it was agreed that all the expenses of preparing and perfecting the securities for the same, and enrolling a memorial thereof, should be borne by the said [*grantor*].]

Recital of bond for payment of annuity,

AND WHEREAS the said [*grantor*], by his bond or obligation, in writing, under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*] in the penal sum of —— thousand pounds; with a *condition* thereunder-written for making the same void, if the said [*grantor*] should well and truly

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*pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], *One* annuity or yearly sum of —— hundred pounds of lawful money of Great

Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the same bond or obligation: *And also*, if the heirs, executors, or administrators of the said [*grantor*], should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators or assigns, in case the said [*grantor*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— hundred pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum should have become due, Then a proportional part of the said quarterly payment of the said annuity or yearly sum of —— hundred pounds, to be computed from the day of the date of the same bond or obligation, to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of such annuity or yearly sum of —— hundred pounds should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— hundred pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantor*], to the day of his decease. And whereas, for better securing the payment of the said annuity or yearly sum of —— pounds, the said [*grantor*] hath executed a warrant of attorney, bearing even date with the said bond and these presents, thereby authorising and empowering certain attornies, therein named, to confess a judgment against him in his Majesty's Court of ——, at Westminster, in an action of debt upon the said bond, for the sum of —— thousand pounds, and costs of suit; *And* it is intended and agreed, that judgment shall be immediately entered thereupon *accordingly. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of —— hundred pounds of lawful money of Great Britain, on the day of the date, and immediately before

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

and proportional part.

Recital of warrant of attorney to confess judgment.

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Testatum.

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

the execution of these presents, paid by the said [*grantee*] to the said [*grantor*], [in notes (*a*) of the Governor and Company of the Bank of England, payable to bearer on demand;] The receipt and payment whereof, he the said [*grantor*] doth hereby admit and acknowledge; and of and from the same, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*grantee*], his heirs, executors, administrators, and assigns, *He* the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], the said annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on the days and times, and in the manner in the said recited bond or obligation mentioned and appointed for payment thereof: And that the heirs, executors, or administrators, of the said [*grantor*], shall and will on demand, within twenty days after the death of the said [*grantor*], well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, such proportional part of the said annuity or yearly sum of —— pounds, for the time which at the decease of the said [*grantor*] shall have elapsed of the quarterly payment of the same annuity growing due at the time of his decease, as in the said hereinbefore in part recited bond or obligation is mentioned: And also that he the said [*grantor*] shall and will, upon having reasonable notice, at any time or times hereafter, at the request and desire of the said [*grantee*], his executors, administrators, or assigns, appear in person, as often as there may be occasion for so doing, at any *office or place of insurance within the cities of London or Westminster; or send the said [*grantee*], his executors, administrators, or assigns, notice of his place of abode, and such vouchers as the office may re-

Covenant for payment of annuity.

Covenant by grantor, to attend at Insurance Office, or send vouchers of his health.

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(*a*) *Vide ante*, p. 460, n. (*a*).

quire, respecting his state of health, from time to time; in order that the said [*grantee*], his executors, administrators, or assigns, (if he or they should think fit) may insure the life of the said [*grantor*] for any sum or sums of money not exceeding the sum of —— pounds of lawful money of Great Britain and Ireland; AND ALSO that he the said [*grantor*] shall not nor will, at any time hereafter, depart and leave this kingdom, or go and travel upon the seas, or reside in foreign parts (or take upon himself any military or naval employment), without giving, every time, one calendar month's previous notice in writing to the said [*grantee*], his executors, administrators, or assigns, to enable him or them to make known the same at the office or offices where the life of the said [*grantor*] shall or may be insured, to the end that the additional premium or premiums, to be thereby incurred, from time to time, for the purpose of keeping on foot any policy or policies of insurance, effected or to be effected by the said [*grantee*], his executors, administrators, or assigns, on the life of the said [*grantor*], for any sum or sums of money not exceeding in the whole the sum of —— pounds of lawful money of Great Britain and Ireland, may be paid unto the office or offices, where the life of the said [*grantor*] may for the time being be so insured; AND FURTHER, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, and assigns, all such additional premium or premiums of insurance as the said [*grantee*], his executors, administrators, or assigns, shall or may pay unto such office or offices, in respect of the matters last aforesaid, within the space or time of seven days after every or any such payment shall be made as aforesaid; AND ALSO(*b*) that he the said [*grantor*] shall not nor will do any act, deed, or thing whatsoever, whereby or by

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

To give notice of going on the seas, &c.

And to pay additional premiums for insurance;

and not to do any act whereby policies shall be forfeited.

(*b*) This is inserted to guard against a forfeiture of the policy, by the grantor committing treason or suicide. [But if the insurance is effected in the name of the *grantee*, it is not liable to be affected by such event.]

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

means whereof any such policy or policies of insurance as aforesaid shall or may become forfeited, or the money thereby secured shall not become payable. AND THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said [*grantor*] and the said [*grantee*], that the said judgment upon the aforesaid

Defeazance on judgment.

[*532] bond shall be considered as a security *only, for better and more effectually securing the payment of the said annuity or yearly sum of —— pounds to the said [*grantee*], his executors, administrators, and assigns, during the life of him the said [*grantor*], at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the condition to the said recited bond, and of such proportional part thereof as aforesaid; AND that no execution or executions shall be issued or taken out upon the said judgment, unless and until some payment or proportion of the said annuity or yearly sum of —— pounds, or some part thereof, shall be in arrear for twenty-one days next after some or one of the days, or after the times in and by the said condition to the said hereinbefore recited bond or obligation limited and appointed for the payment thereof as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*]; and the said [*grantor*] for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree to and with the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity or yearly sum of —— pounds, or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond or obligation; *Then,* and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions, upon or by virtue of the said judgment hereinbefore mentioned, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity or yearly sum of —— pounds, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators)

or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof: And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards; *and* notwithstanding any rule or practice of the court in which the said judgment shall be entered on record, to the contrary; And that the said [*grantor*], his heirs, executors, administrators, or assigns, shall not nor will have, take, or receive, or attempt, by any ways or means, to have, take, or receive any advantage for want of reviving or keeping the said judgment on foot. Provided always, *and it is hereby agreed and declared*, that from and after the decease of the said [*grantor*], and full payment of all arrears of the said annuity or yearly sum of —— pounds, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in any wise relating to the said judgment and premises, he the said [*grantee*], his executors, administrators, or assigns, shall and will, upon the request, and at the costs and charges of the heirs, executors, administrators, or assigns, of him the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. In witness, &c.

COVENANT FOR PAYING ANNUITY, AND ADDITIONAL PREMIUM; WITH DEFEAZANCE ON JUDGMENT.

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COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

COVENANT *by a* TENANT FOR LIFE *to surrender a* COPYHOLD *Estate to the Use of the Grantee of an* ANNUITY *for ninety-nine Years, if the Grantor should so long live; collaterally secured by Bond and Warrant of Attorney to confess Judgment thereon;* USUAL COVENANTS *for Payment of the Annuity, and for Title, &c.* DEFEAZANCE *on the Judgment; and Clause for* REPURCHASE, *after the Expiration of three Years, on giving six Months' Notice, and repaying Purchase Money, or on repaying Purchase Money and Half a Year's Annuity, without giving any Notice.*

THIS INDENTURE, made the —— day of ——, in the year, &c. *George* the *Fourth*, &c. and in the year of
Parties. of our Lord one thousand eight hundred and ——; BETWEEN [*grantor*], of &c., of the one part; and [*grantee*], of &c., of the other part. WHEREAS at a general court-
Recital of grantor's admission. leet and court-baron of the manor of ——, in the county of ——, held on the —— day of ——, one thousand eight hundred and ——, *it was presented* by the homage, that [*ancestor*], then late one of the customary tenants of the said manor, died seised of *All that* customary messuage or tenement, &c., situate, lying, and being within the said manor, which were theretofore the estate of [——] deceased; and that, upon his death, the said [*grantor*], his son, became entitled to the same premises for his life, under and by virtue of a surrender made by the said [*ancestor*], at a court holden for the said manor on the —— day of ——, one thousand seven hundred and ——, to the use
[*535] of a certain indenture *bearing date the —— day of ——, one thousand seven hundred and ——, in the same surrender particularly mentioned and set forth: *At* which

court the said [*grantor*] humbly prayed of the lord to be admitted tenant to the premises so surrendered by the said [*ancestor*] his father, on the said —— day of ——, one thousand seven hundred and ——, to the uses of the said indenture: *To* whom the lord by his steward granted seisin by the rod, *To hold* unto the said [*grantor*], and his assigns, for and during the term of his natural life, according to the tenor and true intent and meaning of the said indenture by the rod, at the will of the lord, according to the custom of the said manor, by the rents, customs, and services therefore due and of right accustomed. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity, or clear yearly sum of —— pounds of lawful money of Great Britain, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the term of ninety-nine years, if the said [*grantor*] should so long live, to be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon: *And* by a surrender of the said copyhold premises, on the condition, and upon the trusts hereinafter mentioned, at or for the price or sum of —— hundred pounds [(*a*) out of which said sum of —— hundred pounds it was agreed, upon the treaty for the purchase of the said annuity, that all costs, charges, and expenses attending the said contract, and for preparing and perfecting the several securities for the same, and making such surrender, and also for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS the said [*grantor*], by his bond or obligation in writing under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*] in the penal sum of —— thousand pounds; *With a Condition* thereunder written for making the same void, if the said [*grantor*] should well and truly pay or cause to be paid *unto the said [*grantee*], his executors, administrators, or assigns, for and during the term of ninety-nine years, if the said [*grantor*] should so long

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

Recital of contract for purchase of annuity,

to be secured by bond, judgment, and surrender.

Recital of bond for paying annuity for grantor's life,

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(*a*) *Vide ante*, p. 460, n. (*b*).

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

live, *One* annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the same bond or obligation: AND ALSO, if the heirs, executors, or administrators of the said [*grantor*], should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantee*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of —— should become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the same bond or obligation to the day of the death of the said [*grantor*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds should have become due at the time of the decease of the said [*grantor*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— hundred pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantor*], to the day of his decease; AND the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorising and empowering certain attornies therein named to confess a judgment against him in his Majesty's court of —— at Westminster, in an action of debt upon the said bond, for the said sum of [*penal sum*] thousand pounds, and costs, at the suit of the said [*grantee*]. NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and for and in consideration of the sum of *—— hundred pounds of lawful money of Great Britain, by the said [*grantee*] to the said [*grantor*] in hand well and truly paid at or before the sealing and delivery of these

and proportional part.

Recital of warrant of attorney.

Testatum.

Consideration in bank notes.

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presents, [(*b*) in notes of the Governor and Company of the Bank of England, payable to bearer on demand,] The receipt and payment whereof he the said [*grantor*] doth hereby admit and acknowledge, and of and from the same and every part thereof, Doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them, for ever, by these presents, he the said [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*] shall and will (*c*), at the request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], surrender into the hands of the lord or lords, lady or ladies of the said manor of —— for the time being, according to the custom of the said manor, ALL THAT the said hereinbefore mentioned customary messuage or tenement and premises, with the appurtenances, TO THE USE of the said [*grantee*], his executors, administrators, and assigns, for and during and unto the full end and term of ninety-nine years, if the said [*grantor*] should so long live (*d*), to be held at the *will of

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

Covenant by grantor, to surrender copyhold premises according to the custom of the manor,

to the use of grantee, for ninety-nine years, if grantor should so long live.

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(*b*) *Vide ante*, p. 460, n. (*a*).

(*c*) A previous surrender is to be generally preferred. *Vide, infra*, p. 563, n. (*c*).

(*d*) The statutes 29 Car. 2, c. 13, s. 12, and 14 Geo. 2, c. 20, s. 9, respecting estates *pour autre vie*, do not extend to copyholds. *Withers* v. *Withers*, Ambl. 152; 7 Bac. Abr. 417 (B); *Zouch* v. *Forse*, 7 East, 186; 1 Watk. Cop. 302; 2 Ibid. 196. And therefore, if an estate *pour autre vie* in copyholds, be limited to a man and his executors, administrators, and assigns, on the death of the tenant *pour autre vie*, the estate would determine, at law at the least. Noy's Maxims, 116, 9th ed.

The statutes respecting estates *pour autre vie*, do not extend to copyholds.

[There can be no general occupancy of copyholds, the freehold being in the lord; and if, therefore, copyhold lands be limited to a person for the life of another, without words of limitation, his estate is determined at his own decease, though that event happen in the life-time of the *cestui que vie*. *Smartle* v. *Penhallow*, 2 Lord Raym. 994; *Doe* d. *Lempriere* v. *Martin*, 2 Black. 1150. Upon this principle it was lately held, that where copyhold lands were limited to A. for the lives of herself and B., and afterwards the reversion was limited to C., and A. died in the life-time of B., an ejectment brought by C. against the devisee of A., more than

No general occupancy of copyholds,

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the lord, according to the custom of the said manor; UPON CONDITION *nevertheless*, that if the said [*grantor*], or his

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twenty years after the decease of A., though shortly after B.'s decease, was barred by the statute of limitations, the title of C., the reversioner, having accrued at the former period. *Doe* d. *Foster* v. *Scott*, 4 Barn. & Cress. 706; *S. C.* 7 Dowl. & Ryl. 191. But it was admitted in this case, that, *by custom*, the estate might have enured to A.'s heir or devisee, or to the *cestui que vie*. This, indeed, was established by the case of *Doe* d. *Nepean* v. *Goddard*, 1 Barn. & Cress. 522; *S. C.* 2 Dowl. & Ryl. 773, where a custom was held to be good, that where a copyhold was granted to a person for the lives of other persons, and the life of the longest liver of such other persons successively, and the copyholder died during the life or lives of such other person or persons without having devised the copyhold, such other person or persons should be entitled to hold the same successively as they are named, during their respective lives: but if the grantee devised the copyhold, then the devisee should be entitled to hold the same during the lives of such persons so surviving as aforesaid.

unless by custom.

In stating that an estate *pour autre vie* in copyholds, limited to a man, his executors, administrators, and assigns, determines at his death, Mr. Bythewood has assumed, that executors or administrators cannot be special occupants of an estate *pour autre vie*, (a point which he has taken great pains to establish in another work; see Byth. Noy's Maxims, 114;) for, otherwise, a copyhold, so limited, would clearly devolve upon them in that character; and, according to *Ripley* v. *Waterworth*, 7 Ves. 425, would be distributable as the personal estate of the deceased tenant. But the point is not likely to arise as to copyholds held *pour autre vie*, as stewards of manors almost invariably object to their being limited to the executors or administrators, but require the limitation to be to the *heirs*, which excludes all question, as the heir then takes as special occupant.]

Advantages of creating a term for years, if tenant for life should so long live.

By creating a term for years, if the tenant for life should so long live, the grantee acquires the benefit of the estate for life, although nominally a reversion continues in the grantor; because it is *possible* the estate for life may last longer than the number of years mentioned; and on account of the legal principle, that an estate for life, according to the gradation of estates, is to be *presumed* of longer duration than an estate even for a thousand, or any other number of years. *Jermin* v. *Orchard*, Show. Par. Cas. 203, and *vide ante*, p. 337. By this form of limitation, the copyhold estate will be *possessed* by the same persons to whom the annuity will be payable, in case of the grantor's death before the annuity is repurchased or determined, thereby preventing the inconvenience of having the estate in the heir of the grantee, whose infancy might cause difficulties in procuring a re-surrender on repurchasing the annuity, if the surrender should have

assigns, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, in manner and form in the said recited bond or obligation mentioned and appointed for payment thereof, *Then* the said surrender shall be void. And *it is hereby declared and agreed* by and between the said parties to these presents, that in case default should be made in payment of the said annuity or yearly sum of —— pounds, according to the condition of the said recited bond or obligation, and hereinbefore mentioned, then he the said [*grantee*], his executors, administrators, and assigns, shall be possessed of and interested in the said messuage or tenement and premises hereinbefore mentioned, Upon trust, by and out of the rents, issues, and profits of the said messuage or tenement and premises hereinbefore covenanted to be surrendered, or any part or parts thereof; or by mortgage or sale thereof, or of any part or parts thereof; or by all or any of the same ways and means; or by such other ways and means whatsoever as to him the said [*grantee*], his executors, administrators, or assigns, shall seem meet, to raise and levy such sum and sums of money as shall be sufficient to pay and satisfy the said annuity or yearly sum of —— pounds secured by the said bond or obligation, or so much thereof as shall from time to time happen to be in arrear and unpaid at the days and times in and by the condition to the said bond *or obligation mentioned [*539] and appointed for the payment thereof; *And also* all such sums of money, losses, costs, charges, damages, and expenses (if any) as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, expend, or be put unto, for or by reason or means of the nonpayment of the said annuity or clear yearly sum of —— pounds, or any part thereof, at or on the days and times, and in the manner in and by the condition to the

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annuity agreeably to bond, surrender to be void.

But in default of payment,

upon trust, out of rents to raise and pay himself annuity and costs;

become absolute by nonpayment, *vide postquam*, p. 563, n. (*c*); and as the heir of the grantee would take the estate *pour autre vie*, by descent, it seems a fine would be payable on his admission, where a fine is payable on the death of a tenant dying *seised*. Noy's Maxims, 114, 9th ed. *sed vide* 1 Watk. Cop. 313; Gilb. Ten. 327; Scriv. Cop. 402, 2nd ed.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

said bond or obligation mentioned and appointed for the payment thereof, or for the performance of the trusts hereby declared or expressed of and concerning the said messuage or tenement and premises hereinbefore covenanted to be surrendered, or otherwise howsoever relating thereto; *And* shall and do retain, pay, and apply the monies so to be raised, in payment and satisfaction thereof accordingly (*e*); *And subject* to the trust aforesaid, the said messuage or tenement and premises hereinbefore covenanted to be surrendered, shall be IN TRUST for the said [*grantor*] and his assigns, for and during the said term of ninety-nine years, determinable as aforesaid. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said parties to these presents, that all and every the contracts, agreements, sales, mortgages, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done, or executed, by the said [*grantee*], his executors, administrators, or assigns, of or concerning the said messuage or tement and premises hereby covenanted to be surrendered, or any part thereof, shall, to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], or his assigns, should not execute the same, or join therein, or assent thereto, as such contracts, agreements, sales, mortgages, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things would have been, if the said [*grantor*], or his assigns, had duly executed the same, and joined therein, or assented thereto; **And* that the person or persons to whom the said [*grantee*], his executors, administrators, or assigns, shall convey or otherwise dispose of the said messuage or tenement and premises, hereby covenanted to be surrendered, or any of them, or any part or parts thereof, shall, notwithstanding the said [*grantee*] should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the same messuage or tenement and premises, against the said [*grantor*] and his as-

and subject thereto, in trust for grantor and his assigns.

Sales and mortgages by grantee, to be valid without grantor's concurrence.

[*540]

Trusts to invest residue on government securities.

(*e*) If it be the agreement, add trusts for investing the residue of the mortgage or purchase money, and the rents and profits, upon government securities, *ut infra*, p. 552.

signs, and all persons claiming, or to claim, by, from, through, under, or in trust for him or them. PROVIDED ALWAYS, *and it is hereby further declared and agreed* by and between the said [*grantor*] and [*grantee*], and the said [*grantor*] doth hereby direct and appoint, that the person or persons who shall pay to the said [*grantee*], his executors, administrators, or assigns, all or any part of the rents and annual profits of the said messuage or tenement and premises hereby covenanted to be surrendered, or advance any money upon any sale or sales, or upon the security of any mortgage or mortgages of the same premises, or any part thereof, or otherwise, pursuant to the trusts hereinbefore contained, shall not be obliged or required to see to the application of the said rents, profits, and money respectively, or any of them; nor to inquire whether such receipt of the rents and profits, sale or sales, mortgage or mortgages, is or are necessary for all or any of the purposes hereinbefore mentioned; nor be answerable or accountable for the misapplication or nonapplication of the same: AND that all receipts which shall be given by the said [*grantee*], his executors, administrators, or assigns, for all or any part of the said rents, profits, and money respectively, shall be good and sufficient acquittances and discharges for the sum and sums of money which by such receipts, and every of them, shall be acknowledged or expressed to be or to have been received. PROVIDED ALSO, *and it is hereby further declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his executors, administrators, and assigns, shall not be charged or chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or their hands, by virtue of these presents; nor with or for any loss or damage *which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, by these presents, in manner following, that is to say; That he the said [*gran-*

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Grantee's receipt for rents and profits, and purchase and mortgage monies, to be effectual discharges.

Grantee not to be answerable for more money than comes to his hands.

[*541]

Covenant by grantor for paying annuity.

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tor], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, limited, and appointed for payment thereof in and by the condition to the said in part recited bond or obligation: [AND ALSO that he the said [*grantor*] is, at the time of the sealing and delivery of these presents, lawfully and rightfully seised of and in, or well entitled unto, the said messuage or tenement and premises hereinbefore covenanted to be surrendered, of a good estate in possession for his life, according to the custom of the said manor, without any condition, use, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which can or may defeat, alter, change, revoke, determine, make void, or incumber the same, or any part or parts thereof:] AND ALSO that he the said [*grantor*] now hath in himself good right, full power, and lawful and absolute authority, to surrender the said messuage or tenement and premises hereinbefore covenanted to be surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, if the said [*grantor*] should so long live, upon the trusts, and to and for the intents and purposes, hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: AND FURTHER, that the said messuage or tenement and premises hereinbefore covenanted to be surrendered, shall, and lawfully may from time to time and at all times hereafter, remain, *continue, and be to the use of the said [*grantee*], his executors, administrators, and assigns, for and during the said term of ninety-nine years, determinable as aforesaid, upon the trusts and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; *And* shall and may be accordingly, peaceably, and quietly had, held,

That he is seised of the premises for life, according to the custom of the manor.

And has power to surrender the same upon trusts declared.

And that premises shall continue upon the trusts declared.

[*542]

and enjoyed, without, the lawful let, suit hindrance, interruption, or denial of him the said [*grantor*], or his assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures, forfeitures, free bench, uses, trusts, intails, rents, arrears of rent, statutes, judgments, recognizances, titles, charges, and incumbrances whatsoever, had, made, done, or committed, or knowingly or willingly suffered, by the said [*grantor*], or any other person or persons whomsoever, by, through, or with, his act, means, default, procurement, or privity: AND MOREOVER, That he the said [*grantor*] shall and will from time to time and at all times hereafter, upon the reasonable request of the said [*grantee*], his executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, administrators, or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, things, conveyances, surrenders, and assurances in the law whatsoever, for further and better, more perfectly and absolutely, surrendering and assuring the said messuage or tenement and premises hereinbefore covenanted to be surrendered, with their and every of their appurtenances, to the use of the said [*grantee*], his executors, administrators, and assigns, during the said term of ninety-nine years, if the said [*grantor*] should so long live, on the conditions, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concern*ing the same, *As* by the said [*grantee*], his executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably devised or advised and required. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, it was agreed, that the said judgment so to be confessed upon

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Free from incumbrances.

For further assurance.

[*543]

Recital that judgment was to be entered.

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the said bond, for the said sum of [*penal sum*], and costs as aforesaid, should be entered on record in the said court of —— as of this present [*Michaelmas*] term, [*Hilary*] term next ensuing, or some other subsequent term. Now THIS INDENTURE FURTHER WITNESSETH, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], that &c. (*Add defeazance on the judgment, ut ante*, p. 531). AND [WHEREAS upon the treaty for the purchase of the said annuity, or yearly sum of —— pounds hereinbefore mentioned, it was mutually agreed by and between the said [*grantor*] and [*grantee*], That the said [*grantor*] (*d*) should at any time after the expiration of the space or time of three years from the date hereof, but not sooner, at his or their own pleasure, be at liberty to repurchase the said annuity or yearly sum of —— pounds, upon giving unto the said [*grantee*] (*e*), his executors, administrators, or assigns, six calendar months' notice in writing of such his or their intention, and upon paying unto the said [*grantee*] (*e*), his executors, administrators, or assigns, the full sum of —— hundred pounds of lawful money of Great Britain, being the original purchase-money as and for the consideration of such repurchase; together with all arrears that should be due on the same; and a proportional part thereof, [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same: *Or* in case the said [*grantor*] (*d*) should be minded and desirous of repurchasing the said annuity or yearly sum of —— hun*dred pounds, and should not give such six calendar months' notice, then that he the said [*grantor*] (*d*) should, at any time after the expiration of the said space of three years, but no sooner, at his (or their) own pleasure, be at liberty to repurchase the

Defeazance on judgment.

Clause for repurchase after expiration of three years, on giving six months' notice and repaying purchase-money, or on repaying purchase-money and half a year's annuity, without giving notice.

[*544]

GRANTEE'S OR NOMINEES' LIVES.

(*d*) If the annuity be granted for the grantee's life, or for the lives of nominees, add—

" his heirs, executors, or administrators,"

GRANTEE'S LIFE.

(*e*) If the annuity be granted for the grantee's life, say—

" or his assigns,"

said annuity or yearly sum of —— hundred pounds, upon paying unto the said [*grantee*] (*g*), his executors, administrators, or assigns, the full sum of —— hundred and —— pounds of lawful money of Great Britain, being the original purchase-money and two quarterly payments of the said annuity of —— hundred pounds, as and for the consideration of such repurchase of the said annuity of —— hundred pounds, together with all arrears that should be due on the same, and a proportional part thereof [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same. NOW THIS INDENTURE FURTHER WITNESSETH, That for effectuating the said last-mentioned agreement, and for the considerations aforesaid,] *It is hereby declared and agreed* by and between the said parties to these presents, to be the true intent and meaning of these presents, and of the said parties; *And* the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*], his executors, administrators, and assigns, and every of them, that in case the said [*grantor*] (*h*) should at any time after the expiration of the space or time of three years from the date hereof, but not sooner, be minded and desirous of repurchasing the said annuity or yearly sum of —— hundred pounds, and of such his or their intention, should give unto the said [*grantee*] (*g*), his executors, administrators, or assigns, notice in writing by the space of six calendar months, that he the said [*grantee*] (*g*), his executors, admini-*strators, or assigns, shall and will, at the expiration of [*545] such six calendar months from the time such notice shall be given as last aforesaid, on receiving all such sums of money whatsoever as shall be then due for the arrears of

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(*g*) If the annuity be granted for the life of the grantee, say— GRANTEE'S LIFE.

" or his assigns,"

(*h*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add— GRANTEE'S OR NOMINEES' LIVES.

" his heirs, executors, or administrators,"

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

the said annuity or yearly sum of —— hundred pounds, together with a proportional part thereof, [from the last day of payment preceding such repurchase] up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of —— hundred pounds, as and in full for the repurchase of the said annuity or yearly sum of —— hundred pounds, secured as aforesaid; *But* in case the said [*grantor*](*i*), from and after the said space or time of three years, but not sooner, should be minded and desirous of repurchasing the said annuity or yearly sum of —— hundred pounds, and should not give such six calendar months' notice in writing, then that he the said [*grantee*](*k*), his executors, administrators, or assigns, shall and will, on receiving all sums of money whatsoever that shall be then due for the arrears of the said annuity or yearly sum of —— pounds, together with a proportional part thereof from the last day of payment preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of —— hundred and —— pounds, as and in full for the repurchase of the said annuity or yearly sum of —— hundred pounds, secured as aforesaid: And on receipt of either of the said sums, as the case may happen, and all arrears of the said annuity or yearly sum of —— hundred pounds, secured as aforesaid, and such proportional part thereof as aforesaid, shall and will, at the proper costs and charges in the law of him the said [*grantor*](*i*), [*546] *deliver the said bond to the said [*grantor*](*i*), cancelled, or to be cancelled; and acknowledge, or cause satisfaction to be acknowledged, on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; and re-surrender the said premises hereinbefore covenanted to be surrendered unto the said

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GRANTEE'S OR NOMINEES' LIVES.

(*i*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

"his heirs, executors, or administrators,"

GRANTEE'S LIFE.

(*k*) If the annuity be granted for the life of the grantee, say,

"or his assigns,"

[*grantor*](*m*), or as he or they shall order, direct, or appoint: *And then*, and in such case, the said annuity or yearly sum of —— hundred pounds shall cease, determine, and be no longer paid or payable, any thing hereinbefore contained to the contrary thereof in any wise notwithstanding. IN WITNESS, &c.

COVENANT TO SURRENDER COPYHOLDS BY TENANT FOR LIFE; WITH DEFEAZANCE ON JUDGMENT; REPURCHASABLE.

(*m*) If the annuity be granted for the life of the grantee, or for the lives of nominees, add,

" his heirs and assigns,"

GRANTEE'S OR NOMINEES' LIVES.

[547]

COVENANT *to surrender a* COPYHOLD *Estate of Inheritance,* UPON CONDITION *to be void on Payment or Repurchase of an* ANNUITY *for the Lives of the Grantee and two Nominees, and the Lives and Life of the Survivors and Survivor of them; collaterally secured by Bond and Warrant of Attorney to confess Judgment; But on Default in Payment,* UPON TRUSTS *for Sale, and to invest the Purchase-monies on Government Securities, in trust to pay the Annuity:* DEFEAZANCE *on the Judgment; and Proviso for* REPURCHASE *on giving seven Days' Notice, and paying the original Consideration Money and half a Year's Annuity in advance.*

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

THIS INDENTURE, made the —— day of ——, in the —— year of the reign, &c. *George* the *fourth*, &c. and in the year of our Lord 18—; BETWEEN [*grantor*], of &c., of the one part; and [*grantee*], of &c., of the other part. WHEREAS the said [*grantor*] is seised of or well entitled to the inheritance in possession, according to the custom of the manor of —— in the county of ——, of and in the several pieces or parcels of land and heredita-

Parties.

Recital of grantor's seisin of a copyhold estate of inheritance.

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

ments hereinafter covenanted to be surrendered. And whereas the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of —— hundred pounds of lawful money of Great Britain and Ireland, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes and all other deductions whatsoever, for and during the natural lives of him the said [*grantee*], *and [*two nominees*], of &c., and the lives and life of the survivors and survivor of them; *To* be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon; and by a surrender of the said copyhold premises, Upon trust as hereinafter mentioned; *At* or for the price or sum of —— thousand pounds; [(*a*) out of which said sum of —— thousand pounds it was agreed that all costs, charges, and expenses attending the said contract and incident thereto, and for preparing and perfecting the several securities for the said annuity, and for making the said surrender, and also for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] And whereas the said [*grantor*], by his bond or writing obligatory, under his hand and seal, bearing even date with these presents, hath become bound to the said [*grantee*] in the sum of —— thousand pounds; and the said bond or writing obligatory is conditioned to be void, if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of him the said [*grantee*], and the said [*nominees*], and the lives and life of the survivors and survivor of them, *One* annuity or yearly sum of —— hundred pounds of lawful money of Great Britain and Ireland, free from taxes, and all other deductions whatsoever, on four days or times in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of ——

Recital of contract for annuity.

[*548]

Recital of bond for annuity, for the lives of the grantee and two nominees, and the lives and life of the survivors and survivor of them.

(*a*) *Vide ante*, p. 460, n. (*b*).

next ensuing the date thereof; *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or assigns of the said [*grantee*], in case the survivor of them the said [*grantee*] and [*nominees*] should die on any day on which any quarterly payment of the said annuity or yearly sum of —— hundred pounds should become due, the whole of such *quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of —— pounds should have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the same bond or writing obligatory, to the day of the death of the survivor of them the said [*grantee*] and [*nominees*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds should have become due at the time of the decease of the survivor of them the said [*grantee*] and [*nominees*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— pounds as should happen to be next and immediately preceding the day of the death of the survivor of them the said [*grantee*] and *nominees*, to the day of the death of such survivor. AND WHEREAS the said [*grantor*] hath, by a writing under his hand and seal, bearing even date with these presents, authorized [*solicitor residing in town*], one of the attornies of his Majesty's Court of King's Bench at Westminster, or any other attorney of the same court, by confession or otherwise, to suffer judgment to be entered up against him in the said Court of King's Bench, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the sum of [*penalty of bond*] and costs of suit; and judgment is to be forthwith entered up against the said [*grantor*], under the authority of the said warrant of attorney (*b*). NOW THIS INDENTURE WITNESSETH, That in pursuance of the said agreement, and for and in consideration of the sum of —— thousand pounds of lawful money of Great Britain and

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

[*549]

Recital of warrant of attorney for confessing judgment on annuity bond.

Testatum.

(*b*) If the surrender have been previously made, *vide post*, p. 562.

SURRENDER PREVIOUSLY MADE.

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

Consideration paid by a banker's cheque.

Ireland, by the said [*grantee*] to the said [*grantor*], in hand well and truly paid, at or before the sealing and delivery of these presents, [in manner following, that is to say; by a draft or cheque bearing even date with these presents, drawn by the said [*grantee*] on Messrs. —— and Co. bankers, in —— aforesaid, for the said sum of —— thousand pounds, payable to the said [*grantor*], or bearer, on demand;] *The* receipt *whereof he the said [*grantor*] doth hereby acknowledge, and thereof, and of and from the same and every part thereof, doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them, by these presents, [out of which said sum of —— thousand pounds the said [*grantor*], immediately after receiving the same, paid to [*solicitor*], of &c., gentleman, the sum of —— pounds six shillings and eight pence, for attendances respecting the granting of the said annuity, and for preparing and perfecting the several securities for the same, and for the surrender hereinafter covenanted to be made, and also for preparing and enrolling a memorial thereof,]

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Covenant to surrender.

he the said [*grantor*] Doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree to and with the said [*grantee*], his heirs, executors, administrators, and assigns, That he the said [*grantor*], and all and every other person and persons having any estate or interest therein, shall and will, at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, or administrators, surrender into the hands of the lord or lords, lady or ladies, of the said manor of —— for the time being, according to the custom of the said manor, All those several pieces or parcels of land, situate, lying, and being at ——, within the said manor of ——, and containing by estimation, &c. and all other the lands, tenements, and hereditaments whatsoever, of him the said [*grantor*], holden of the said manor by copy of court roll, with their rights, members, and appurtenances, To the use of the said [*grantee*], his heirs and assigns for ever; Upon Condition *nevertheless*, that if the said [*grantor*], his heirs, executors, administrators, or assigns, should well and truly pay or cause to be paid

Parcels.

To the use of grantee, upon condition, that if grantor pay annuity according to condition of bond, surrender to be void.

unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— hundred pounds, in manner and form in the said recited bond or writing obligatory mentioned and appointed for payment thereof; or if the said [*grantor*], his heirs, executors, administrators, or assigns, should repurchase the said annuity or yearly sum of *—— hundred pounds, upon the terms and conditions hereinafter mentioned, then the said surrender shall be void. And *it is hereby declared and agreed* by and between the said parties to these presents, that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments hereinbefore mentioned, Upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same, that is to say; Upon trust, to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the yearly and other rents, issues, and profits thereof, to and for his and their own use and benefit, until some default shall happen to be made of or in payment of the said annuity or yearly sum of —— hundred pounds, hereby intended to be secured unto the said [*grantee*], his executors, administrators, and assigns, or some part thereof, at or on the days or times, and in manner limited and appointed for payment thereof as aforesaid. And upon further trust, that in case the said annuity or yearly sum of —— hundred pounds, or any part thereof, should happen to be behind and unpaid for the space of forty days next over or after any of the said days or times whereon the same is limited and appointed to be paid as aforesaid; then and in such case, and whenever the same shall happen, it shall be lawful for the said [*grantee*], his heirs and assigns; and he and they are hereby fully authorized, required, and empowered to sell, and absolutely dispose of all and every the said several pieces or parcels of land and hereditaments hereinbefore mentioned, and hereby covenanted to be surrendered, either together or in parcels, and either by public auction or private contract, unto any person or persons whomsoever, for the most money or best price or prices that can

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Declaration that grantee shall stand seised of premises, upon trust to permit grantor to receive rents until default in payment.

And upon trust in default of payment for forty days, to sell premises, and to stand possessed of money arising from sale;

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be reasonably had or gotten for the same (*x*); And to execute and make all such deeds, conveyances, and assurances, of the said several pieces or parcels of land and hereditaments, to the purchaser or purchasers thereof, as shall be requisite or necessary for the completion of such sale or sales; And to stand and be possessed of and interested in all and every the sum and sums of money to arise and be produced from the sale or sales hereinbefore directed to be made, and of the rents, issues, and profits of the said several pieces or parcels of land and hereditaments to arise and become payable after the same hereditaments shall become saleable, until the sale or sales thereof shall be completed; Upon trust thereout, in the first place, to retain and reimburse himself and themselves all such costs, charges, and expenses, as he or they shall or may sustain, expend, or be put unto, in or about the making and completing of such sale or sales, or otherwise in the execution of the trusts hereby in him and them reposed; And after payment thereof, as to the surplus of the money arising from such sale or sales as aforesaid, Upon trust, by and out of the same to retain and pay to him the said [*grantee*], his executors, administrators, or assigns, so much of the said annuity or yearly sum of —— hundred pounds, as at the time of completing such sale or sales shall happen to be in arrear and unpaid; *and also* all such sum and sums of money, losses, costs, charges, damages, and expenses (if any) as the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay, sustain, or be put unto, by reason or means of the nonpayment of the said annuity or yearly sum of —— hundred pounds, or any part thereof, at or on the days and times, and in the manner hereinbefore mentioned or appointed for the

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Upon trust to retain expenses and arrears of annuity;

Grantee may buy in at any auction.

[(*x*) It seems proper to add—"With liberty to buy in the same hereditaments at any sale or sales by auction, if the said [*grantee*], his heirs or assigns shall think proper so to do, and resell the same at any future auction or auctions or by private contract, without being responsible for any loss which may be occasioned thereby."

(As to the utility of this clause, *vide post*, Vol. 5, p. 261).]

payment thereof, or otherwise however relating thereto. And upon further trust, to place out or invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce of the said several pieces or parcels of land and hereditaments, until such sale or sales shall be completed, upon government securities, at interest, in the name or names of him the said [*grantee*], his executors, administrators, or assigns. And *it is hereby declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his executors, administrators, and assigns, shall stand possessed of and be interested in the money so to be placed out and invested, Upon trust, by and out of the interest, dividends, and proceeds thereof, and if such yearly dividends, interest, and proceeds should be insufficient, then in addition thereto, by calling in, sell-*ing, and disposing, from time to time, of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities for the same, to retain and pay to himself and themselves the said annuity or yearly sum of —— hundred pounds, as and when the same shall become due and payable: And upon trust also, by and out of the money so to be placed out and invested, and the dividends, interest, and proceeds thereof, to retain to him the said [*grantee*], his executors, administrators, and assigns, all such costs, charges, and expenses, as he or they may sustain, or be put unto, in the execution of the trusts hereby reposed in him and them, respecting the money hereinbefore directed to be invested or placed out at interest; And subject to the trusts hereinbefore declared, concerning the money so to be invested or laid out at interest as hereinbefore mentioned, the same and the interest thereof, or so much thereof, and of the interest thereof, as shall not be applied in answering such trusts as are hereinbefore thereof declared, shall be In trust for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. Provided always *and it is hereby declared and agreed* by and between the said parties to these presents, That after the decease of the survivor of them the said [*grantee* and *nominees*], and full payment unto the executors, administrators, or assigns, of the said [*grantee*] of the said an-

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And to invest residue of money upon government securities;

And out of dividends or interest to pay annuity, and if interest not sufficient, then by selling part of principal;

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And subject thereto in trust for grantor.

Proviso, That after nominee's decease, and payment of all arrears of annuity and costs, premises covenanted to be surrendered, or

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nuity or yearly sum of —— hundred pounds, and such proportional part thereof; and all costs, charges, damages, and expenses, as aforesaid, the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered as aforesaid, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts herein before declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and to be assigned and surrendered as he or they shall direct or appoint. PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said parties to these presents, that all and every the contracts, agreements, sales, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, which shall be entered into, made, done or executed by the said [*grantee*], his heirs, or assigns, of or concerning the said several pieces or par-

so much as should not be sold under the trusts, shall be in trust for grantor, his heirs and assigns.

Declaration that the conveyances executed by grantee shall be effectual, although grantor should not join therein:

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*cels of land and hereditaments hereby covenanted to be surrendered, or any part thereof, shall, to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto, as such contracts, agreements, sales, dispositions, conveyances, surrenders, assurances, acts, deeds, matters, and things, would have been if the said [*grantor*] had duly executed the same, and joined therein or assented thereto: (*a*) [AND that the person or persons to whom the said [*grantee*], his heirs or assigns, shall convey, surrender, or otherwise dispose of the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered, or any of them, or any part or parts thereof, shall, notwithstanding the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the same pieces or parcels of land, hereditaments, and premises, against the said [*grantor*], his heirs and assigns, and all and every person and persons claiming, or to claim, by, from, through, under, or in trust for him, them, or any of them.] PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said

and that the receipt of grantee for rents and

(*a*) *Vide post*, p. 569.

parties to these presents, that the receipt or receipts of the said [*grantee*], his heirs, executors, administrators, or assigns, shall, from time to time, be a good and sufficient discharge, or good and sufficient discharges, to the person or persons who shall pay the said rents and profits, or purchase money of the said pieces or parcels of land and hereditaments so to be sold as aforesaid, or any of them, or any part or parts thereof, and to his, her, and their respective heirs, executors, administrators, and assigns, for so much of the rents and profits or purchase-money as shall therein be acknowledged to be received; *And* that such person or persons, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application, of such rents and profits or purchase-money so to be received, or any part thereof, nor be obliged to inquire into the reason or necessity of receiving such rents and profits, or of making any such sale or sales (*x*). PROVIDED ALSO, *and it is hereby further agreed and declared* by and between the said parties to these presents, *that the said [*grantee*], his heirs, executors, administrators, and assigns, shall not be charged or

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purchase money, shall be a sufficient discharge to purchaser.

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And that grantee shall not be answerable for more money than comes to his hands.

[(*x*) The trusts for sale, it will be observed, are to be exercised by the grantee, his *heirs*, or assigns, but the investment of the monies arising from the sale, &c. is to be made in the name or names of the grantee, his *executors, administrators*, or assigns, to whom the annuity is payable. It seems therefore to be proper to add a clause exonerating the former from seeing to the application of the money, for which the following is suggested—

Suggested additional clause

" PROVIDED ALSO, *and it is hereby declared and agreed*, that if in the execution of the trusts hereinbefore contained, any sum or sums of money shall become payable by the real representative or representatives of the said [*grantee*], to the personal representative or representatives of the said [*grantee*], for the purpose of being invested or otherwise under or by virtue of the same trusts, or any of them, then and in such case the said real representative or representatives of the said [*grantee*], paying over the said monies to the personal representative or representatives of him the said [*grantee*], and taking his or their receipt for the same, shall be discharg-

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chargeable with or for any sum or sums of money, other than such as shall actually and respectively come to his or ed from all responsibility in respect of the application thereof."

The introduction of trusts for sale and investment into annuity deeds is frequently objected to on account of their prolixity. The present editor has therefore given a concise form of a trust for this purpose—

Concise form of trust for sale.

"AND *it is hereby declared and agreed,* that the said [*grantee*], his heirs, and assigns, shall stand seised of the hereditaments hereinbefore covenanted to be surrendered, *Upon the trusts* following; namely, UPON TRUST to permit the said [*grantor*], his heirs, and assigns, to receive the rents and profits thereof until default shall be made in payment of the said annuity of £—— or some part thereof on any one of the days hereinbefore appointed for payment of the same, *And* UPON FURTHER TRUST, in case the same annuity or any part thereof shall be unpaid for the space of —— days after any or either of the said days of payment, forthwith to make sale and absolutely dispose of the said hereditaments or any part thereof, either together or in parcels, and by public auction or private contract, with liberty to purchase in the same at any auction, if it shall be deemed expedient, without being liable for any loss occasioned thereby, and to convey and assure the said hereditaments, when so sold, unto the purchaser or purchasers thereof; *And* to stand possessed of the monies to arise from such sale or sales; and the rents and profits which shall be received by the said [*grantee*], his heirs, or assigns, from the said hereditaments, after the same shall have become saleable, UPON TRUST thereout, in the first place, to retain the costs attending the execution of the trusts hereby created; And after payment thereof, UPON TRUST to retain or pay unto him, the said [*grantee*], his executors, administrators, or assigns, all the arrears then due of the said annuity of £—— and all costs and expenses which he or they shall have paid or incurred by reason of the non-payment thereof. AND UPON FURTHER TRUST, to place out the residue (if any) of the said monies to arise and be received from such sale or sales, or rents and profits, as aforesaid, in the

Trust for investment.

their hands, by virtue of these presents; *Nor* with or for any loss or damage which may happen in or about the execution

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name or names of the said [*grantee*], his executors, administrators, or assigns, at interest in government securities of the united kingdom, with liberty to vary the same as he or they shall think proper. *And it is hereby further declared and agreed* that the said [*grantee*], his executors, administrators, or assigns, shall stand possessed of the stocks, funds, or securities on which the said trust monies shall be so invested; UPON TRUST, out of the annual produce thereof, and, if that shall be insufficient, out of the monies to arise by the sale from time to time of a sufficient part of such stocks, funds, and securities, to retain unto himself and themselves the said annuity of £—— when and as the same shall become payable, and also the costs and expenses attending the said last-mentioned trust, respecting the said monies so to be invested as aforesaid; And subject to the trusts aforesaid, UPON TRUST, to stand possessed of the said stocks, funds, and securities for and for the benefit of the said [*grantor*], his executors, administrators, or assigns. PROVIDED ALWAYS, *and it is hereby declared and agreed,* that after the expiration of the said annuity of £——, and the payment of all arrears thereof, and of such proportional part thereof, and all such costs and expenses as aforesaid, the said [*grantee*], his heirs and assigns shall stand seised of the said hereditaments hereby covenanted to be surrendered IN TRUST for the said [*grantor*], his heirs and assigns, and to be surrendered and disposed of as he or they, at his or their own costs and charges, shall direct. PROVIDED ALSO, *and it is hereby further declared and agreed,* that [every sale and assurance which shall be made or executed by the said [*grantee*], his heirs or assigns, shall be binding and conclusive on the said [*grantor*], his heirs and assigns, although he or they shall not concur therein, or shall object to or oppose the same; And that] every receipt which shall be given by the said [*grantee*], his heirs or assigns, for any purchase-money or rent which shall be received by him or them, by virtue of the trusts aforesaid, shall effectually discharge the person or persons paying

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of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the said [*grantee*], his executors, administrators, and assigns, by these presents, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural lives of him the said [*grantee*] and the said [*nominees*], and the lives and life of the survivors and survivor of them, the said annuity or yearly sum of —— pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form expressed, limited, and appointed for payment thereof, in and by the said in part recited bond or writing obligatory. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree to and with the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to say; That he the said [*grantor*], at the time of the sealing and delivery of these presents, [is and stands lawfully and rightfully seised of and in, or well entitled unto, the said several pieces or parcels of land and hereditaments hereby covenanted to be surrendered, of a good estate of inherit-

Covenant by grantor to pay annuity.

Covenant by grantor, that he is seised of the estate, according to the custom of the manor;

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the same, from all responsibility in respect of the application thereof. *And further*, that no purchaser or purchasers of the said hereditaments hereby covenanted to be surrendered, shall be obliged to inquire into the necessity or propriety of any sale or sales made by the said [*grantee*], his heirs or assigns, nor be affected by express notice that such sale or sales is or are unnecessary and improper; and any person or persons paying any rents and profits of the said hereditaments to the said [*grantee*], his heirs or assigns, shall not be obliged to inquire whether the receipt thereof is in conformity to, or authorized by the trusts hereinbefore declared, nor be affected by express notice that such receipt is unauthorized by, and contrary to the same trusts. *(Add clause, ut supra, at the commencement of this note.)*]

ance, in possession, according to the custom of the said manor, without any condition, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which can or may defeat, alter, change, charge, revoke, determine, make void, or encumber the same, or any part or parts thereof: AND ALSO that he the said [*grantor*] hath in himself good right, full power, and lawful and absolute authority, to surrender all and singular the said several *pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, and according to the true intent and meaning of these presents: AND FURTHER, that the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered, shall and lawfully may, from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity or yearly sum of —— hundred pounds, remain, continue, and be, to the use of the said [*grantee*], his heirs and assigns, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same; AND shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hindrance, interruption, or denial, of him the said [*grantor*], his heirs and assigns, or any other person or persons whomsoever: AND free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all [and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures, free-bench, uses, entails, rents, arrears of rent, statutes, judgments, recognizances, titles], charges, and incumbrances whatsoever, had, made, done, or committed, or willingly suffered by the said [*grantor*], or any other person and persons whomsoever: AND MOREOVER, that he the said [*grantor*] and his heirs, and all and every other per-

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and hath good right to surrender same upon trusts declared; and that on default in paying annuity, the premises shall remain to grantee, upon trusts declared;

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free from incumbrances;

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son and persons whosoever, having or lawfully claiming, or who shall or may hereafter have or lawfully claim, any estate, right, title, trust, or interest of, in, to, or out of the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered as aforesaid, or any of them, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges

and for further assurance.

[*557] *of the said [*grantor*], his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, deeds, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly and absolutely surrendering and assuring the said several pieces or parcels of land and hereditaments, hereinbefore covenanted to be surrendered, with their and every of their appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared, of and concerning the same; As by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, and required. AND [WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— hundred pounds, it was agreed, that the said judgment so to be confessed upon the said bond, for the said sum of [*penalty of bond*] thousand pounds and costs, as aforesaid, should be entered on record in the said Court of King's Bench, as of this present Michaelmas term, Hilary term next ensuing, or some other subsequent term. NOW] THIS INDENTURE FURTHER WITNESSETH, *And it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], that the said judgment upon the aforesaid bond shall be considered as a security only for the better and more effectually securing the payment of the said annuity or yearly sum of —— hundred pounds to the said [*grantee*], his executors, administrators, and assigns, during the natural lives of the said

Recital that judgment was to be entered on warrant of attorney,

Defeazance on judgment.

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[*grantee*] and [*nominees*], and the lives and life of the survivors and survivor of them, at the several days and times, and in the manner limited and appointed for the payment thereof, in and by the said condition to the said recited bond, and of such proportional part thereof as aforesaid: And that no execution or executions shall be issued or taken out upon the said judgment, unless and until the whole or a part of some quarterly payment of the said annuity or yearly sum of —— hundred *pounds [*558] shall be in arrear for twenty-one days next after some or one of the days, or after the times in and by the condition to the said hereinbefore recited bond or obligation limited and appointed for the payment thereof as aforesaid. Provided always, *and it is hereby declared and agreed* by and between the said [*grantor*] and [*grantee*], and the said [*grantor*], for himself, his heirs, executors, and administrators, *Doth* hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that when and so often as the said annuity or yearly sum of —— hundred pounds, or any part thereof, or such proportional part thereof as aforesaid, shall be behind and unpaid by the space of twenty-one days next over or after any of the days or times mentioned or appointed for payment thereof in the condition to the said bond; that then and so often, and in every such case, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon or by virtue of the said judgment hereinbefore mentioned, as he or they shall think fit or be advised for the recovery of the arrears of the said annuity or yearly sum of —— hundred pounds, and every part thereof; and all costs and charges which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall bear, pay, sustain, or be put unto, for or by reason or means of the non-payment thereof; And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive or cause the said judgment to be revived, or do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards, and notwith-

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standing any rule or practice of the said Court of King's Bench to the contrary: And that the said [*grantor*], his heirs, executors, or administrators, shall not nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage in consequence of not reviving or keeping the said judgment on foot. Provided always, *and it is hereby agreed and declared*, that from and after the decease of the survivor of them the said [*grantee*] and [*nominees*]; and full payment of all arrears [*559] *of the said annuity or yearly sum of —— hundred pounds, and such proportional part thereof as aforesaid, and all such costs, charges, damages, and expenses as aforesaid, and all other costs, charges, damages, and expenses in anywise relating to the said judgment and premises; he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the request, and at the costs and charges of the heirs, executors, or administrators of the said [*grantor*], acknowledge satisfaction of the said judgment upon the record thereof. And (*c*) [whereas upon the treaty for the purchase of the said annuity or yearly sum of —— hundred pounds hereinbefore mentioned, it was mutually agreed by and between the said [*grantor*] and [*grantee*], that the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter, at his or their own pleasure, be at liberty to repurchase the said annuity or yearly sum of —— hundred pounds, upon giving unto the said [*grantee*], his executors, administrators, or assigns, seven days' notice in writing of such his or their intention, and upon paying unto the said [*grantee*], his executors, administrators, or assigns, the full sum of —— thousand and —— hundred pounds of lawful money of Great Britain, being the original purchase money and two quarterly payments of the said annuity of —— hundred pounds, as and for the consideration of such repurchase; together with all arrears that should be due on the same, and a proportional part thereof from the last day of payment preceding such repurchase, up to and

Recital of agreement for repurchase on paying half a year's annuity.

REPURCHASABLE BY INSTALMENTS.

(*c*) If the annuity be repurchasable by one payment, or by instalments, *vide ante*, p. 468.

including the day of repurchasing the same. Now] THIS INDENTURE FURTHER WITNESSETH, that [for effectuating the said last-mentioned agreement, and] for the considerations aforesaid, *it is hereby declared and agreed* by and between the parties to these presents, to be the true intent and meaning of these presents, and of the said parties; AND the said [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*], his heirs, executors, and administrators, and every of them, that in *case the said [*grantor*], his heirs, executors, administrators, or assigns, should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of —— hundred pounds, and of such his or their intention should give unto the said [*grantee*], his executors: administrators, or assigns, seven days' notice in writing, that he the said [*grantee*], his executors, administrators, or assigns, shall and will, at the expiration of seven days from the time such notice shall be given as last aforesaid, on receiving all sums of money whatsoever which shall be then due on the arrears of the said annuity of —— hundred pounds, together with a proportional part thereof from the last day of payment thereof preceding such repurchase, up to and including the day of repurchasing the same as aforesaid, accept, receive, and take the said sum of —— thousand and —— hundred pounds, as in full for the repurchase of the said annuity or yearly sum of —— hundred pounds, secured as aforesaid; AND on receipt of the said sum of —— thousand and —— hundred pounds, and all arrears of the said annuity or clear yearly sum of —— hundred pounds, secured as aforesaid, and such proportional part thereof as aforesaid, shall and will, at the proper costs and charges in the law of him the said [*grantor*], his heirs, executors, administrators, or assigns, deliver the said bond to the said [*grantor*], his heirs, executors, administrators, or assigns, to be cancelled; *And* acknowledge, or cause to be acknowledged, satisfaction on the record of the judgment which shall be entered up by virtue of the said warrant of attorney; AND then and in such case the said annuity or yearly sum of —— hundred pounds, and the

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

Declaration of agreement for repurchase on paying half a year's annuity.

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On repurchasing annuity,

COVENANT TO SURRENDER COPYHOLDS, WITH TRUSTS FOR SALE, DEFEAZANCE, &c.

trusts herein contained for securing the payment thereof, shall cease, determine, and be void; And then and in such case the said [*grantee*], his heirs or assigns, shall and will, at the request, costs, and charges of the said [*grantor*], his heirs, or assigns, acknowledge or cause to be acknowledged upon the court rolls of the said manor of ——, to have received full satisfaction, according to the form and effect of the said surrender; or otherwise surrender the said several pieces or parcels of land and hereditaments hereinbefore covenanted to be surrendered, or *so much thereof as shall not then have been sold and disposed of under the trusts hereinbefore declared, unto the said [*grantor*], his heirs or assigns; or as he or they shall direct or appoint; And then also, and in that case, if the same hereditaments, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, shall and will transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns, any thing herein contained to the contrary thereof in any wise notwithstanding. In witness, &c.

grantee to acknowledge satisfaction on court rolls, or surrender premises, or such part as shall not be sold under trusts, unto grantor or his heirs; and if any part be sold, and produce invested in the funds, to transfer securities to grantor, or his executors.

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COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

COVENANT *to pay an* Annuity, *for the* Grantee's Life, *collaterally secured by a previous Surrender of* Copyhold *Premises, and a Bond and Warrant of Attorney to confess Judgment thereon; where the consideration Money is paid by a Bill of Exchange.*

This Indenture, made the —— day of ——, in the —— year of the reign of our sovereign lord *George* the *Fourth*, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, and in the year of our Lord, 18—; Between [*grantor*], of —— in the county of ——, of

Parties.

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

the one part, and [*grantee*], of —— in the county of ——, of the other part. WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of one annuity or yearly sum of —— pounds, to be paid free from taxes, and clear of all other deductions whatsoever, to the said [*grantee*], his executors, administrators, and assigns, for and during the term of the natural life of the said [*grantee*], at or for the price or sum of —— hundred pounds: [(*a*) AND upon the treaty for such purchase it was agreed, that all costs and charges attending the said contract, and for preparing and perfecting the several securities hereinafter mentioned, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] AND WHEREAS (*b*) at a special court (*or* court ba-*ron) held (in and) for the manor of —— in the county of ——, on the day of the date of these presents, (*or* on the —— day of (*c*) —— last past,) the said [*grantor*],

Recital of contract for annuity for grantee's life.

Securities to be perfected at grantor's expense.

Recital of previous surrender of copyhold.

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(*a*) *Vide ante*, p. 460, n. (*b*).

(*b*) If the surrender were made out of court to two customary tenants of the manor say—

SURRENDER OUT OF COURT.

"AND WHEREAS the said [*grantor*] hath, on the day of the date of these presents, surrendered by the rod into the hands of the lord of the manor of ——, in the county of ——, by the hands and acceptance of [*copyholders*], two of the customary tenants of the said manor, ALL THOSE, &c." *ut supra.*

(*c*) When copyhold premises are intended as a security for an annuity, sometimes a previous surrender is made on condition, as in the above form, with trusts for sale, &c. on default in payment; and sometimes a covenant is entered into, to make a subsequent surrender on the same condition and trusts, *ut ante*, p. 550; but it is generally prudent to have the surrender actually made before the consideration money is paid: and when, from circumstances, that cannot be previously accomplished, it should be done as soon after as possible; but more especially where the annuity is granted for the life of the grantee or of a nominee; for, in case of the grantor's death, before making the surrender, much trouble and inconvenience may be experienced, in procuring it to be made, in consequence of the infancy or obstinacy of his customary heir. [See an additional reason suggested for not relying upon a covenant to surrender merely as a security, *post*, Vol. 5, p. 352.]

Practice as to copyhold securities for annuities.

COVENANT TO PAY ANNUITY, SECURED AY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

surrendered by the rod, into the hands of the lord, according to the custom of the said manor, ALL *those* several

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Parcels.

Condition and trusts should be inserted on court rolls.

The usual proviso or condition, making the surrender void on the due payment of the annuity, and also the trusts for sale, &c. should always immediately follow the surrender, and be carefully inserted in the court rolls. The condition and trusts are, however, often contained in the deed of covenant, without being mentioned on the court rolls; but this mode should never be adopted when it is possible to be avoided: for, the surrender being absolute on the rolls, should the defeazance be lost, the proof of the condition and trusts may be difficult, and frequently impossible, because the form of the memorial required by the present annuity act does not disclose these circumstances, and copyholds are not within the acts for registering deeds, &c. in Middlesex and Yorkshire. Besides, the title to copyhold lands should always appear on the court rolls of the manor, and not be dependent on any private deeds or agreements: and even if a defeazance be made by a separate deed, it should always be entered on the rolls; because the lord, by consenting to a condition or trust on the court roll, in case of escheat, &c. is bound by the condition or trust, as he cannot claim against his own act. *Burgess* v. *Wheate*, 1 Wm. Blacks. Rep. 167; 1 Eden, 232, *S. C.*; *Stockdale* v. The *South Sea Company*, 2 Atk. 141; **Peachy* v. Duke of *Somerset*, Prec. Chan. 573. *Vide* 5 Cru. Dig. 581, s. 78, 2d. ed.

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Surrenderor continues tenant until surrenderee's admittance.

As well in the case of a conditional as of an absolute surrender, the surrenderor remains tenant to the lord until the admission of the surrenderee; so much so, that, prior to 55 Geo. 3, c. 192, the surrenderor could not, after the conditional surrender, and *before* the admission of the surrenderee, devise the copyholds without a previous surrender to the use of his will. *Kenebel* v. *Scrafton*, 8 Ves. 30; *Doe* v. *Wroot*, 5 East, 130; Coote, Mortg. 111. And if the surrenderor die before the admittance of the surrenderee, the surrenderor will die *tenant to the lord;* and, consequently, an heriot will be due on his death. 1 Watk. Cop. 147; *Doe* v. *Tofield*, 11 East, 246. For the same reason, no heriot will be due on the death of the surrenderee before his admission. So, if a copyholder *covenant* to surrender, and before a surrender be made the covenantee assign his interest, one fine only will be due on the assignee's admission, because the covenantee never was tenant to the lord, and the lord will be obliged to admit the assignee accordingly. The *King* v. the lord of the manor of *Hendon*, 2 Durnf. & East, 484; 1 Watk. Cop. 103, 294.

Fine due on surrenderor's death before surrenderee's admittance.

One fine only due on admission of assignee of covenantee.

Surrenderee may in equity, before admittance, assign or devise copyholds.

A surrenderee not being tenant until admittance, he cannot in the mean time pass the lands by surrender, although he may make an equitable transfer of them. *Doe* v. *Tofield*, 11 East, 246. He may also devise the lands, and they will pass in equity; *Davie* v. *Beversham*, 3

pieces or parcels of land, situate, lying, and being at ——, within the said manor, and containing by estimation, &c.

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND. &c.

Ch. Rep. 4; but the devisee will not be entitled to admission as legal tenant, for a legal devise of copyholds cannot be made before admittance; and therefore, although the devisee be admitted, the surrenderor or his heir will still remain tenant to the lord. But equity will consider the legal tenant to be a trustee for the devisee. The proper course to be pursued probably would be for the heir of the surrenderee to be admitted, and to make a surrender to the devisee. In *Doe* d. *Vernon* v. *Vernon*, 7 East, 8, it was held that a devisee who had been admitted, of a devisee who had not been admitted, could not maintain an ejectment at law; because, if he had any title, it was in equity. Coote, Mortg. 114.

[It is clear that an heir, or a devisee, who has not been admitted, is incompetent to devise either at law or in equity. *Smith* v. *Trigg*, 1 Stra. 487; *Wainewright* v. *Elwell*, 1 Madd. 627.]

On performance of condition, surrenderor may re-enter.

Whether the surrenderee has been admitted or not, if the condition be performed according to the terms of the surrender, the surrenderor may re-enter without a new admittance, and he will be in of his old estate. Gilb. Ten. 276. *Simonds* v. *Lawnd*, Cro. Eliz. 239. In all cases, however, when the purposes for which the conditional surrender was made have been answered, in order to clear the title, it is usual for the conditional surrenderee to acknowledge satisfaction, and authorize the steward to vacate the surrender; which acknowledgment *of satisfaction, [*565] the warrant to vacate, and the actual vacation of the surrender, are then entered on the rolls. 1 Watk. Cop. 116, 186, 213.

Surrenderee not usually admitted until default in payment.

On a conditional surrender for securing an annuity, it is not usual for the surrenderee to be admitted until default has been made in payment, in order to avoid the fees for admission and performance of the customary services; and unless there be a special custom in the manor, by which the lord may compel a surrenderee to be admitted, he cannot, it seems, compel the surrenderee's admission, even after condition broken; *Basspool* v. *Long*, 1 Roll. Abr. 568, pl. 6; 7 Vin. Abr. 171, pl. 5; Cro. Eliz. 879; 1 Show. 30, 83; *King* v. *Dilliston*, 1 Salk. 386; Carth. 41; Prec. in Chan. 573; but if there be such a custom, it seems he may compel him, and a Court of equity will not give relief. *Tredway* v. *Fotherley*, 2 Vern. 567.

If a conditional surrender becomes absolute, and the surrenderor be afterwards re-admitted, the descent will be changed.

If the surrenderee be admitted, and the condition be broken by non-payment of the annuity, his estate will be absolute: and to reconvey the legal estate to the grantor of the annuity, a resurrender, a re-admission, and a fine will be necessary; Gilb. Ten. 276; and the grantor will thereupon gain a new estate by purchase, and the descent be altered; so that if the lands had originally descended to him *ex parte materná*, they will after-

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with their rights, members and appurtenances; *And* all other the lands, tenements, and hereditaments whatsoever of him the said [*grantor*], holden of the said manor by copy of court roll; *To the use* of the said [*grantee*], his heirs and assigns for ever, according to the custom of the said manor; *On Condition* that if the said [*grantor*], his heirs, exe-

To the use of grantee.

On condition to be void on paying

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wards descend *ex parte paternâ*. *Benson* v. *Scott*, 12 Mod. 49; *Hannam* v. *Morgan*, 7 Durn. & East, 103; Scriv. Cop. 245, 2d ed.

Surrenderor may release the condition and trusts to surrenderee by deed.

After the conditional surrenderee has been admitted, he becomes tenant to the lord, and the surrenderor may, before the condition be broken, release by deed to him the benefit of the condition, or make an absolute surrender to him: and after the condition be broken he may release the ulterior trusts for his benefit, or the equity of redemption in case of a mortgage; after admittance of the surrenderee, the equitable interest of the surrrenderor cannot properly be extinguished by a surrender, although such surrender would probably be held to operate as a release: in either of these cases, the conditional surrenderee being already in possession, and having paid his fine for admission, no additional fine to the lord on the surrenderor's release would be due. *Kite* v. *Queinton*, 4 Co. 25; *Hull* v. *Sharbrook*, Cro. Jac. 36; Hal. MS. n. Co. Litt. 59 a, (2).

Surrenderee must be admitted before he can recover in ejectment.

Before the surrenderee can recover the possession in ejectment, he must be admitted; but he may recover upon a demise laid between the date of the surrender, and admittance; the title of the surrenderee, after admittance, being perfect *from the time of the surrender*, and relating back to it, as against all persons, besides the lord; 1 Durnf. & East, 601; and it

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is sufficient if the lessor of the plaintiff be admitted at any time *before the trial; for the admittance is only a circumstance required by law merely for the sake of the lord; *Benson* v. *Scott*, 1 Salk. 185; *Roe* v. *Hicks*, 2 Wils. 15; *Vaughan* v. *Atkins*, 5 Burr. 2786; *Doe* v. *Bennington*, 16 East, 208; [and has been decided not to be requisite where the grant proceeds from the lord himself. *Roe* d. *Cosh* v. *Loveless*, 2 Barn. & Ald. 453.]

Action for mesne profits.

The surrenderee may recover the mesne profits from the surrenderor when he is the defendant in ejectment, from the time of the surrender, on the equitable principle that the surrenderor is considered as a trustee for the surrenderee. *Holdfast* v. *Clapham*, 1 Term Rep. 600; *Roe* v. *Hicks*, 2 Wils. 15. So the grantee of an annuity, after a recovery in ejectment, against a tenant in possession under a demise from year to year, and after giving notice to the tenant of his title, and requiring him to attorn and to pay the rent remaining in his hands, may maintain an action for use and occupation against the tenant for all rent in his hands at the time of the notice, and down to the day of the demise in the ejectment; but not afterwards. *Birch* v. *Wright*, 1 Term Rep. 378.

cutors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], or his assigns, for and during the natural life of him the said [*grantee*], *One* annuity or yearly sum of —— pounds of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date thereof: *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the executors, administrators, or as*signs of the said [*grantee*], in case the said [*grantee*] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of —— pounds should have become due, then a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, to be computed from the day of the date of the said surrender to the day of the death of the said [*grantee*]; *But* in case any quarterly payment of such annuity or yearly sum of —— pounds, should have become due at the time of the decease of the said [*grantee*], then from such of the said quarterly days of payment of the said annuity or yearly sum of —— pounds, as should happen to be next and immediately preceding the day of the death of the said [*grantee*] to the day of his decease: *Or* if the said [*grantor*], his heirs, executors, administrators, or assigns, should repurchase the said annuity or yearly sum of —— pounds, upon the terms and conditions therein and hereinafter mentioned, *Then* and in either of the said cases the said surrender should be void. AND WHEREAS the said [*grantor*] hath by his bond or obligation in writing under his hand and seal, bearing even date with these presents, become bound unto the said [*grantee*] in the sum of [*double the purchase money*]; *With a Condition* thereunder written for making the same void, if the

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

annuity for grantee's life,

with proportional part to his death,

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or on repurchase.

Recital of bond.

With condition to be void on paying annuity,

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

said [*grantor*], his heirs, executors, administrators, or assigns, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, in manner therein and in the said recited surrender mentioned and appointed for payment thereof; *Or* [if the said [*grantor*], his heirs, executors, administrators, or assigns,] should repurchase the said annuity or yearly sum of —— pounds, upon the terms and conditions therein and hereinafter mentioned. AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with these presents, authorizing and empowering certain attornies therein named, to confess a judgment *against him in his Majesty's Court of King's Bench at Westminster, in an action of debt upon the said bond, at the suit of the said [*grantee*], for the said sum of [*penalty of bond*] pounds, and costs of suit. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of —— hundred pounds of lawful money of Great Britain, to the said [*grantor*] in hand well and truly paid by the said [*grantee*], at or before the sealing and delivery of these presents, in manner following, that is to say; by a bill of exchange (*d*), bearing date the —— day of —— instant, drawn by the said [*grantee*] upon, and accepted by [*acceptor*], for the said sum of —— hundred pounds, payable

or on repurchase.

Recital of warrant of attorney.

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Testatum.

Consideration paid

by a bill of exchange,

Payment of consideration in bills of exchange should be avoided if possible.

(*d*) If the consideration, or any part of it, be paid in notes, and any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid, the grantee may be prevented from recovering the annuity. 53 Geo. 3, c. 141, s. 6, *ante*, p. 333.

In cases of this kind, which are of very rare occurrence, it is usual for the grantee to pay the grantor interest at five *per cent.* on the bill until it becomes due; but that is not an adequate remuneration for the delay in the actual payment of the consideration money, in those cases where the annuity commences from the date of the security, because the growing payments on the annuity are oftentimes more than double that rate of interest. In short, the consideration should never be paid in that manner if it can be possibly avoided; for, although such a mode of payment is strictly legal in a *bonâ fide* transaction, yet it is always looked on with suspicion.

to the said [*grantee*], or order, —— months after the date thereof, and by the said [*grantee*] indorsed to the said [*grantor*]; *And also* the sum of —— pounds, —— shillings, and —— pence, being lawful interest on the said bill of exchange, from the day of the date of these presents until the day of actual payment thereof; the receipt of which said sum of —— hundred pounds, he the said [*grantor*] doth hereby acknowledge, and of and from the same sum, and every part thereof, doth hereby acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, *He* the said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said *[*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, [some or one of them,] shall and will from time to time well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, and also such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form hereinbefore mentioned and expressed for payment thereof, and according to the true intent and meaning of these presents. AND *it is hereby declared and agreed* by and between the said parties to these presents, that the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said several pieces or parcels of land and hereditaments, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements, hereinafter mentioned, expressed, and declared, of and concerning the same, that is to say; *(Add trusts for grantor until default in payment; and on default in payment, trusts for sale, &c. ut ante,* p. 551 *to* 555 (*e*).) AND THE

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

Covenant to pay annuity.

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Declaration of trust of copyhold premises previously surrendered to the grantee's use.

Covenant that grantor was

(*e*) Under trusts for sale similar to those above referred to, the owner is usually required to join in the conveyance, which he is generally unwilling to do, his object being to prevent a sale; Sug. Vend. 301, 5th ed. and it was formerly thought that the case of *Croft* v. *Powell*, Comyns's

Under trusts for sale, the trustee can convey a good title to the pur-

seised of the estate, according to the custom of the manor.

said [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise,

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chaser, without the concurrence of the owner.

Rep. 603, authorized a purchaser to insist on his concurrence; Pow. Mortg. 14, 4th ed.; but that case was no authority for such a conclusion, as the Court, on the contrary, clearly admitted that the mortgagee had a power, on non-payment of the money within the time limited, to mortgage or sell the estate, in order to raise the money lent, being accountable for the overplus to the mortgagor: Com. 607, 608: the real question was, whether it was a sale of the lands discharged from the equity of redemption, or a transfer of the mortgage; and it was clearly held to be a transfer. See also 5 Bac. Abr. 7, Gwill. ed.

Under the authority of the following cases, no doubt is now entertained of the competency of trustees for sale to confer a good title to a purchaser, as far as the right to sell is communicated to them by the trust deed. 3 Pres. Abs. 289.

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*In *Clay* v. *Sharpe*, in Chancery, March 1802, Reg. B. A. fol. 66; 18 Ves. 346; 2 Cru. Dig. 105, 2d ed.; Sug. Vend. Appendix, No. XIV. page 20, 5th ed., the circumstances were as follows:

Bill for specific performance *by* purchaser under a power of sale in a mortgage deed, which declared that the joining of the mortgagee in the conveyance, should not be essential to perfect the title,—dismissed with costs, so far as related to the joining of the mortgagor in the purchase deed.

By indenture, bearing date the 28th of November, 1798, and made between *Thomas Wardell*, of the first part; *George Taylor* and *Ann* his wife, of the second part; *E. Day*, of the third part; and *William Sharpe*, of the fourth part; certain leasehold estates were assigned unto the said *Edward Day*, his executors, administrators, and assigns, subject to a proviso or condition for redemption, upon *Wardell*'s transferring into the name of *Day*, his executors, administrators, or assigns, 2,000*l.* 3 *per cent.* consolidated bank annuities. And it was by the indenture agreed, that if default should be made contrary to the proviso or condition of redemption, it should be lawful for the said defendant *Edward Day* to sell the said leasehold premises for the best price that could be reasonably gotten for the same; and to reimburse himself the costs, charges, and expenses relating to such sale; and afterwards to repurchase the said 2,000*l.* 3 *per cent.* consolidated bank annuities, or such part thereof as should remain due, or untransferred; and the overplus of the monies to arise by the said sale, if any, to pay to the said *Thomas Wardell*, his executors, administrators, or assigns. And the said *Thomas Wardell* did, by the said indenture, covenant, that in case of any sale pursuant to the power aforesaid, he the said *Thomas Wardell*, his executors or administrators, would join and concur therein, and execute any assignment to the purchaser or purchasers of the said premises, with the usual covenants for the title thereto; or do any reasonable act confirming such sale. *But that nevertheless it should not be necessary that the joining of the said* Thomas Wardell *in any such sale or conveyance, should be essen-*

and agree, to and with the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to

COVENANT TO PAY ANNUITY, SECURED BY PREVIOUS SURRENDER OF COPYHOLDS, BOND, &c.

tial to perfect the title, the same being intended only for satisfaction of such purchaser or purchasers.

Default was made in transferring the stock, and *Day*, who was a trustee, by *Sharpe*'s directions, put up the premises for sale by public auction, at which sale the plaintiff became the purchaser.

The plaintiff's attorney prepared a draft of the assignment, in which he made *Day* the mortgagee, *Sharpe* the *cestui que trust*, and *Wardell* the mortgagor, parties; but *Wardell*, the mortgagor, having refused to execute the assignment, the plaintiff filed his bill against *Day*, *Sharpe*, and *Wardell*, for a specific performance of the contract for sale.

To this bill the defendants put in their answers, and *Wardell* stated that he resisted the sale, as having been made without his consent, and at an under value; but, before any proceedings were had, *Wardell* be- *came a bankrupt, and, in consequence thereof, a supplemental bill was [*571] filed against his assignees.

The cause coming on to be heard the 15th of November, 1802, the Chancellor decreed that the plaintiff's bills should be dismissed as against the defendants, *Thomas Wardell*, and his assignees, *with costs*, to be taxed by the Master. And it was also decreed, that the agreement entered into by the plaintiff with the defendants, *William Sharpe* and *Edward Day*, for the purchase of the premises in question, should be carried into execution. And that upon the plaintiff's paying unto the said defendants, *William Sharpe* and *Edward Day*, the residue of the purchase money for the premises, the said defendants should execute an assignment of the lease of the said premises to the plaintiff, or as he should appoint. And that the defendants, *Sharpe* and *Day* should pay to the plaintiff his costs of the said suit, so far as the bills were not dismissed, as therein before directed, to be taxed by the Master, in case the parties differed about the same.

Specific performance decreed *against* a purchaser under a power of sale in a mortgage deed without the mortgagor's concurrence, because his concurrence was dispensed with, though he covenanted to join in a sale; without costs, the only

So in *Corder* v. *Morgan*, 18 Ves. 344, November 1811, by indentures, dated the 8th of February, 1804, *William Restorick* conveyed to the plaintiff, his heirs and assigns, subject to the mortgage to *Thomas Beed* for 500*l.* and also subject to redemption on payment of the sum of 500*l.* due to the plaintiff, with interest, on the 8th of June next, and of such other sums as should, before redemption of the premises, become due to the plaintiff from *Restorick*, for money advanced or paid by the plaintiff, &c. and it was declared, that in case default should be made by *Restorick* in payment of the said sum of 500*l.* then actually due, or such sums as should after become due from him to the plaintiff, or interest, by fourteen days after payment required, it should be law-

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say; That he the said [*grantor*] was, at the time of making the said surrender, lawfully and rightfully seised of and

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authority produced not being in print.

ful for the plaintiff, and he was thereby expressly required, of *his own proper authority, and without any farther authority or direction from the said William Restorick*, his heirs, executors, administrators, or assigns, to make sale and dispose of the said hereditaments and premises thereby released, and every part thereof, either absolutely or conditionally, and by way of mortgage; or to demise and lease the same, or any part or parts thereof, for any term or number of years, at such rents or rent as he should think proper; such sale or sales to be either together or in parcels, by public auction or private contract, for the best price that could or might be reasonably had for the same; and such mortgage or mortgages, lease or leases, to be made of the whole or any part thereof to any person or persons who should be willing to purchase the same, or to take a mortgage or mortgages, lease or leases thereof, who, having paid his, her, or their purchase, mortgage, pre*mium, or other consideration money or monies, and having obtained a receipt or receipts for the same from the plaintiff, his heirs, executors, or administrators, should be by such receipt or receipts freely and absolutely discharged from such purchase money, &c. and such purchaser, mortgagee, lessee, &c. should not be obliged to see to the application, or be answerable for the misapplication or non-application of the money; and the money arising by the sale should be applied first to the expenses of the sale, next to the mortgage to *Beed*, unless the sale should be subject to that mortgage; and, after payment thereof, or subject thereto, in payment of the plaintiff, and then the residue of the monies so to arise are to be paid to the said *William Restorick*, his executors, administrators, or assigns; and it was covenanted and agreed, that in case the said hereditaments and premises should be sold, he the said *William Restorick*, his heirs or assigns, would join in such sale, and exccute the several conveyances of the premises to be sold to the use of the purchaser, his heirs or assigns: nevertheless it was *declared that the joining of the William Restorick*, his heirs or assigns, *in any such sale, should not in any wise be deemed essential or necessary to perfect the title of the purchaser* or purchasers, the same being intended for the farther satisfaction of such purchaser or purchasers.

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The plaintiff took an assignment of *Beed*'s mortgage, and, having given the proper notice, agreed to sell the premises to the defendant for 945*l.*, and the bill prayed a specific performance of that agreement.

The defendant by his answer submitted, that the plaintiff was bound to procure *Restorick* and the assignees, under a commission of bankruptcy against him, to join in the conveyance, as the plaintiff undertook to make out a proper title to the premises by good conveyances and assurances in the law, to convey a good and indefeasible estate of inheritance in fee-simple.

in, or well entitled unto the said several pieces or parcels of land, hereditaments, and premises, thereby surrendered,

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Sir *Samuel Romilly* and Mr. *Spranger*, for the plaintiff, contended that this title is, under the power of sale in the mortgage deed, perfectly free from objection; and the case of *Clay* v. *Sharpe* was produced from the Register's book.

Mr. *Joseph Martin* for the defendant.

The undertaking of the mortgagor in the mortgage deed, that he will, for the further satisfaction of the purchaser, join in the sale, authorized by that deed, entitles the defendant to have him a party to the conveyance. In *Croft* v. *Powel*, it is said, upon a case similar to this, that a purchaser would insist upon the mortgagor's joining in the conveyance; Com. 603; see Argu. 608; and in *The King* v. *The In*habitants of Edington*, 1 East, 288, Lord *Kenyon* intimates, that a Court of equity would control a power given to a mortgagee to sell the mortgaged premises†.

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Sir *Samuel Romilly*, in reply, suggested, that something material was probably omitted in the note of Lord *Kenyon's* observation, taken by a gentleman not practising in Courts of equity; and distinguished *Croft* v. *Powel*, where the power of sale was by a defeazance.

The Master of the Rolls said, that when the cause was opened, he was unable to suggest any principle on which the defendant could properly insist on the mortgagor's being a party to the conveyance. His opinion was, that the clause in the mortgage deed relied on for the defendant, empowering the plaintiff to sell, whereby the mortgagor undertook to join in the conveyance, was a mere contract between the mortgagor and mortgagee, to the benefit of which the defendant, as a purchaser, was not entitled; and there was nothing in the nature of the contract between the plaintiff and his mortgagor, which prevented the latter giving, and the former exercising, *such a power of sale* of the premises, as that upon which this question arose. The case of *Clay* v. *Sharpe*, cited by Sir *Samuel Romilly*, is an authority precisely applicable to this case.

A specific performance was decreed, according to the prayer of the

† His Lordship's words were as follows:—In mortgage deeds there is sometimes introduced a clause, that the mortgagee may repay himself by sale of the mortgaged premises without the concurrence of the mortgagor: but a Court of equity would, I believe, control the exercise of that power, I am sure they would control it in an instance like the present, *upon payment of what was due*. The trustee in such a case would be bound to execute a reconveyance: and here there is an express clause to that purpose. 1 East, 292.

On a mortgage with trusts for sale, trustee must reconvey on payment of the money due.

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of a good estate of inheritance in possession, according to the custom of the said manor, without any condition, trust, power of revocation, limitation of new or other use or uses, or any other restraint, matter, cause, or thing whatsoever, which could or might defeat, alter, change, charge, revoke, determine, make void, or incumber the same, or any part or parts thereof: AND ALSO that he the said [*grantor*] had in himself good right, full power, and lawful and absolute authority, to surrender all and singular the said several pieces or parcels of land, hereditaments, and premises, so surrendered as aforesaid, with the appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, according to the true intent and meaning of these presents: AND FURTHER, that the said several pieces or parcels of land, hereditaments, and premises, shall and lawfully may from time to time and at all times hereafter, from and after default shall be made in payment of the said annuity, remain, continue, and be, to the use of the said [*grantee*], his heirs and assigns, upon the trusts, and to and for the intents and pur-

And had good right to surrender.

And in default in paying annuity, premises to remain to grantee upon the trusts declared, free from incumbrances.

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bill: but the Master of the Rolls said, he did not think it a case for costs, as the case of *Clay* v. *Sharpe* was not in print.

These decisions have established the validity of these powers of sale; and they also shew, that the concurrence of the owner of the estate cannot be required by a purchaser, where the estate is authorized to be sold without the assent of the owner, in case default is made in payment of the money on the day named, although there be an express covenant on his part to join in the sale; and that a bill, filed by a purchaser to compel the owner to concur in the conveyance, will be dismissed with costs. And it may also be concluded from the case of *Corder* v. *Morgan*, that if a purchaser should hereafter refuse to complete his sale, by reason of the owner of the estate not concurring in it, and a bill be filed against him by the trustee for sale, for specific performance, it will be decreed against him, *with costs*. Coote, Mortg. 135. Sug. Vend. 314, 6th ed.

Stabback v. *Leat*, Cooper's Rep. 46, does not in the least affect the above question. [For there the trustee for sale, instead of selling the property, conveyed it to the nominee of the mortgagee for a nominal consideration, which of course did not bar the right of redemption, though the amount due upon the mortgage exceeded the value of the property.]

poses hereinbefore mentioned, expressed, and declared, of and concerning the same, and shall and may be accordingly, peaceably, and quietly had, held, and enjoyed, without the lawful let, suit, hindrance, interruption, or denial, of him the said [*grantor*], his heirs or assigns, or any other person or persons whomsoever; And free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified, of, from, and against all and all manner of former and other gifts, grants, bargains, sales, mortgages, surrenders, jointures, *free bench, uses, intails, rents, arrear of rent, statutes, judgments, recognizances, titles, charges, and incumbrances whatsoever, had, made, done, or committed, or willingly suffered by the said [*grantor*], or any other person or persons whomsoever: And moreover, That he the said [*grantor*] and his heirs, and all and every other person and persons whomsoever, having or lawfully claiming, or who shall or may hereafter have, or lawfully claim any estate, right, title, trust, or interest, of, in, to, or out of the said several pieces or parcels of land, hereditaments, and premises so surrendered as aforesaid, or any of them, or any part thereof, shall and will from time to time and at all times hereafter, at and upon the reasonable request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper costs and charges of the said [*grantor*], his heirs, executors, or administrators, make, do, acknowledge, levy, suffer, and execute, or cause and procure to be made, done, acknowledged, levied, suffered, and executed, all such further and other lawful and reasonable acts, things, conveyances, surrenders, and assurances in the law whatsoever, for further, better, more perfectly, and absolutely surrendering and assuring the said several pieces or parcels of land, hereditaments, and premises, with their and every of their rights, members, and appurtenances, to the use of the said [*grantee*], his heirs and assigns for ever, upon the trusts, and to and for the intents and purposes hereinbefore mentioned, expressed, and declared of and concerning the same, *As* by the said [*grantee*], his heirs, executors, administrators, or assigns,

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And for further assurance.

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or his or their counsel learned in the law, shall be reasonably devised or advised and required. (*Add defeazance on the judgment, ut ante*, p. 557; *and power to repurchase, ut ante*, p. 543 *or* 559.) IN WITNESS, &c.

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COVENANT TO SURRENDER WIFE'S COPYHOLD OF INHERITANCE, AS A COLLATERAL SECURITY.

COVENANT *by the Grantor of an* ANNUITY *for the Lives of three Nominees, that he and his* WIFE *will* SURRENDER *her* COPYHOLD *Estate of Inheritance, as a collateral Security, Upon Trusts for Sale, &c., with the ultimate Trust for the Wife and her Heirs.*

THIS INDENTURE, made the —— day of ——, in the —— year, &c., *George* the *Fourth*, &c., and in the year of our Lord 18—; BETWEEN [*grantor*], of &c. and [——] his wife, of the one part; and [*grantee*], of &c., of the other part. WHEREAS the said [*grantor*] and [——] his wife, in the right of the said [——], are seised of or well entitled to the inheritance in possession, according to the custom of the manor of ——, in the county of —— aforesaid, of and in the several messuages, tenements, cottages, lands, hereditaments, and premises hereinafter covenanted to be surrendered. AND WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of one annuity or yearly sum of —— pounds of lawful money of Great Britian, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural lives of [*nominees*], of &c., and the lives and life of the survivors and survivor of them, at or for the price or sum of —— pounds: AND upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, *it was agreed that the same annuity should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up judgment thereon, and by the

Parties.

Recital of seisin in fee of customary lands in right of wife.

Recital of contract for annuity for the lives of three nominees.

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To be secured by grantor's bond; warrant of attorney to confess judgment, and co-

covenant of the said [*grantor*], and by a surrender of the said several copyhold hereditaments and premises, upon the condition and trusts hereinafter mentioned: [AND (*a*) it was also agreed that all costs, charges, and expenses attending the said contract, and for preparing and perfecting the several securities for the said annuity, and for making and perfecting the said surrender, and also for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*].] (*Recite bond of the grantor for paying the annuity; And warrant of attorney to confess judgment, ut ante*, p. 548, 549.) NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the sum of —— hundred pounds of lawful money of Great Britain by the said [*grantee*] to the said [*grantor*] in hand well and truly paid, at or immediately before the sealing and delivery of these presents [(*b*) in notes of the Governor and Company of the Bank of England expressed to be payable to bearer on demand;] The receipt and payment whereof he the said [*grantor*] doth hereby admit and acknowledge; and of and from the same and every part thereof doth acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them for ever, by these presents; *He* the said [*grantor*], with the privity and approbation of the said [——] his wife, testified by her being a party to, and sealing and delivering these presents, doth hereby for himself, his heirs, executors, and administrators, and for the said [——] his wife, covenant, promise, and agree, with and to the said [*grantee*], his heirs, executors, administrators, and assigns, that he the said [*grantor*], and [——] his wife, and all other persons having any estate or interest therein, shall and will, at the request of the said [*grantee*], his heirs, executors, administrators, or assigns, but at the proper *costs and charges of the said [*grantor*], (*c*) surrender into

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venant; and a surrender of wife's customary lands.

Testatum.

Covenant by grantor, that he and his wife will conditionally surrender her copyhold estate to grantee of annuity, upon trusts to secure same.

(*a*) *Vide ante*, p. 460, n. (*b*).

(*b*) *Vide ante*, p. 460, n. (*a*).

(*c*) When the wife's estate is to be a security for an annuity, the sur-

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the hand of the lord or lords, lady or ladies, of the said manor of —— for the time being, according to the custom of the same manor, ALL THOSE several messuages, tenements, cottages, lands, hereditaments, and premises, situate, &c. with their and every of their rights, members, and appurtenances, TO THE USE of the said [*grantee*], his heirs and assigns for ever, at the will of the lord or lords, lady or ladies, according to the custom of the said manor; *Nevertheless* UPON CONDITION, that if the said [*grantor*] or [——] his wife, or his or her heirs, executors, or administrators, should well and truly pay or cause to be paid the said annuity or yearly sum of —— pounds, on the days and times and in the manner in the said bond or obligation mentioned and appointed for payment thereof, then the said surrender shall be void. AND *it is hereby declared and agreed* by and between the said parties to these presents, that he the said [*grantee*], his heirs and assigns, shall stand seised and possessed of the said hereditaments and premises hereinbefore mentioned, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter expressed and declared of and concerning the same, that is to say; UPON TRUST, to permit and suffer the said [*grantor*], and [*Mary*] his wife, and the heirs and assigns of the said [*Mary*], to receive and take the yearly and other rents, issues, and profits thereof, to his, her, and their own use and benefit, until some default shall be made of or in payment of the said annuity or yearly sum of —— pounds, or some part thereof, on the days or times, and in manner mentioned and appointed for payment thereof as aforesaid. (*Add trusts for sale, &c. ut ante*, p. 551); *And subject* to the trusts hereinbefore declared concerning the money so to be invested or laid out at interest as hereinbefore mentioned, the same and the interest thereof, or so much *thereof, and of the interest thereof, as shall not be ap-

Trusts for sale, &c. and subject thereto. Monies produced by sale to be in trust for wife and her heirs.

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render should generally be actually made before paying the purchase money, for fear of the husband's death before the surrender is made. *Vide ante*, p. 563, n. (*c*).

plied in answering such trusts as are hereinbefore declared thereof, shall be IN TRUST for the said [——], the wife of the said [*grantor*], her heirs and assigns. AND *it is hereby declared and agreed* by and between the said parties to these presents, that after the decease of the survivor of them the said [*nominees*], and full payment unto the said [*grantee*], his executors, administrators, or assigns, of the said annuity or yearly sum of —— pounds, and such proportional part thereof, and all costs, charges, damages, and expenses as aforesaid, the said several hereditaments and premises hereby covenanted to be surrendered as aforesaid, or so much thereof (if any) as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be in trust for the said [——], the wife of the said [*grantor*], her heirs and assigns for ever, and shall be assigned and surrendered as she or they shall direct or appoint. (*Add declaration that conveyances, &c. made* by the said [*grantee*], his heirs or assigns, *shall be as valid as if* the said [*grantor*] and [——] his wife, or either of them, or the heirs of the said [*wife*] *had joined therein; grantee's receipts to be sufficient discharges; and indemnity clause to grantee; and covenant by grantor to pay annuity* (*c*), *ut ante*, p. 553.)

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(*c*) The remedies, which the grantee enjoys for securing the payment and recovering the arrears of an annuity, are various, according to the nature and provisions of the grant, and the circumstances by which the *rights of the grantee may have been affected subsequent to the grant: [*580] and there are few sorts of annuities to which some of these remedies do not apply. As at present so much money is advanced upon annuities, nothing which can affect the rights either of the grantor or grantee ought to be passed over unnoticed: and this seems to be a proper place for taking a general elementary view of the subject.

An annuity, in the strict technical acceptation of the word, is defined by Lord Coke to be, a yearly payment of a certain sum of money granted to another in fee, for life, or years, charging the person of the grantor only. Co. Lit. 144 b.

Definition of a personal annuity.

If a man, seised of land, grant a yearly rent, to be issuing out of the land to another in fee, or in fee tail, or for term of life, &c. with a clause of distress, &c. it is a rent charge; but if the grant be without a clause of distress, then it is a rent seck, or a dry rent, for which, before 4 Geo. 2,

Distinction between a rent charge and a rent seck.

Covenants for title, &c.

AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and

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c. 28, s. 5, no distress was incident. Litt. s. 218; Gilb. Rents, 38; Noy's Max. 40, 5th ed. 132, 9th ed.

When both the person and estate are charged, it is generally termed an annuity;
and the grantee may elect which it shall be.

If both the person and the estate be made liable, as they most commonly are, then it is generally called an annuity: whether the one or the other shall be liable, is in the election of the grantee; which election, when once distinctly made, is final and conclusive. Co. Litt. 144 b; Litt. s. 219; 1 Bac. Abr. 177, Gwil. ed. *Annuity and Rent-charge.*

Thus, says Littleton, if a man grant by his deed a rent charge to another, and the rent be behind, the grantee may chuse whether he will sue a writ of annuity for this against the grantor, or distrain for the rent behind, and the distress detain until he be paid. But he cannot do, or have them, both together, &c.; for if he recover by a writ of annuity, then the land is discharged of the distress, &c.; and if he do not sue a writ of annuity, but distrain for the arrears, and the tenant sue his replevin, and then the grantee avow the taking of the distress in the land in a court of record, then is the land charged, and the person of the grantor discharged of the action of annuity. Litt. s. 219; 2 Sand. Uses, 250.

Some cases in which the grantee cannot elect.

But if a man grant a rent charge to another and his heirs, and the grantee dies, and his widow brings a writ of dower against the heir, and the heir, in bar of her dower, claims the same to be an annuity, and not a rent charge, in order to defeat her dower; because of an annuity that charges only the person, and issues not out of any lands or tenements, she is not dowable; Co. Litt. 32 a;—yet the widow shall recover her dower; for the heir cannot determine his election by claim, but by suing of a writ of annuity, as Littleton says; neither can the heir after the endowment have a writ of annuity for the two parts which remain, because that would

[*581] not be according to the deed of grant, for either the *whole must be a rent charge, or the whole an annuity. But Littleton is to be understood with some limitation: for, of a rent granted for equality of partition, a writ of annuity does not lie, because it is of the nature of the land descended. Also, of such a rent as may be granted without deed, a writ of annuity does not lie, though it be granted by deed. Co. Litt. 144 b. Nor upon a rent created by way of reservation. 1 Roll. Abr. 226 (C), pl. 1; Co. Litt. 144 a. Nor upon any rent due by prescription against an heir; Bro. *Annuitie*, pl. 45; because it cannot be known whether he have any land by descent from the same ancestor who granted the rent. Poph. 87; 1 Roll. Abr. 227 (D); Co. Litt. 102 a; 2 Vin. Abr. 507. Nor upon a rent granted for allowance of dower or recompence of a title, because it is in satisfaction of a thing real, and therefore shall not fall into matter

agree with and to the said [*grantee*], his heirs and assigns, by these presents, in manner following, that is to

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personal, but retain the nature of the thing for which it is given. Plowd. Ann. 240.

This election of the grantee to convert an annuity into a rent charge, and a rent charge into an annuity, by the application of his remedy, shews that every rent charge is properly an annuity, though every annuity be not a rent charge, until by such determination in the choice of the remedy, the grantee may have made it *personal*, by charging the person of the grantor, or *real*, by distraining on his land.

Every rent charge is an annuity, but every annuity is not a rent charge.

The sure test of the difference between an annuity and a rent charge, is the remedy which the law gives for recovering the arrears. Thus, a man in *replevin* prescribed that the plaintiff and his ancestors have had common in his land, and used to pay ten shillings rent *per annum* to him and his ancestors for the same common, and so avowed for the ten shillings; and it was holden good by the Court: and they said, this is not rent, but *annuity*, for he cannot have assize, as he cannot have rent out of his own land; and yet it was held a good prescription by the Court: but he ought to allege seisin: and so it appears, a man may have a prescription to distrain in his own land. Bro. Abr. *Prescription*, pl. 1; 2 Vin. Abr. 504, *Annuity* (A. 2), pl. 2; 7 Co. 23 b.

Annuity by prescription.

A rent, in the strict acceptation of the word, cannot be granted to a subject (*Mountjoy's* case, 5 Co. 4) *out of* an incorporeal inheritance, such as a rent, a common, an advowson, a fishery, an office, a corrody, the mulcture of a mill, tythes, fairs, markets, liberties, privileges, franchises, and the like; but only out of lands or tenements whereunto the grantee may have recourse to distrain, or which may be put in view to the recognitors of an assize. Bro. Abr. *Assize*, pl. 2; Co. Litt. 144 a. 7 Co. 23 b; *Talentine* v. *Denton*, Cro. Jac. 111; *Rickman* v. *Garth*, Ibid. 173. Yet such a grant will bind the grantor *by way of contract, [*582] but the grantee cannot distrain. Co. Litt. 47 a. *Dean and Chapter of Windsor* v. *Gover*, 2 Saund. 302.

Although a proper rent cannot be granted out of an incorporeal inheritance, yet it will be good as a contract.

The right of election which the grantee enjoys, of charging the person, or distraining on the land, is a very important consideration, as the exercise or waiver of this right may materially affect the interests both of the grantor and grantee. It is not however to be imagined, that any other action which a grantee may bring in consequence of having such additional remedy given him by the grant, for recovering the arrears of the annuity against the grantor or his representatives, such as debt, covenant, or the like, will produce the same effect as a writ of annuity, which is a specific remedy, and attended with the specific effect before mentioned. Plowd. Ann. 239.

Importance of pointing out grantee's right of election.

An action of debt, covenant, &c. do not produce the same effect as a writ of annuity.

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say; that he the said [*grantor*] and [——] his wife, now at the time of the sealing and delivery of these pre-

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Of the determination of the election.

Neither the presumption of law, nor the *express grant as rent*, shall take from the grantee the benefit of his election, where no default was in him. Therefore, said Chief Justice *Popham*, if a *rent charge be granted in tail*, the grantee may bring a writ of annuity, and thereby prejudice his issue, because then it shall not be taken to be an intail, but as *a fee simple conditional* ab initio. *Fulwood* v. *Ward*, Poph. 87. If the grantee of a rent bring an assize for it, he shall never after have an annuity; because, by bringing the assize, he has elected it to be a rent. But this determination of the election of a grantee must be by action or suit in a Court of record; for although the grantee distrain for the rent, yet he may bring a writ of annuity and discharge the land. But if the grantee bring a writ of annuity, and at the return thereof appear and count, this is a determination of his election in a Court of record, although he never proceed any further. So, if the grantee bring an assize for the rent, and make his plaint, he shall never after bring a writ of annuity. But the purchasing a writ of annuity, and entry of it in a Court of record, or of an assize, is no determination of the election; because a stranger may purchase a writ in the name of the grantee, and enter it of record; but if the grantee appear thereto, &c. that amounts to a determination of his election, as it has been said. Co. Litt. 145 a. So, an avowry in a Court of record, which is in the nature of an action, is a determination of his election before any judgment given. Co. Litt. 145 b. So, if A. grant a rent charge to B., which is paid to him, and then B. grant it over to C., and the tenant of the land attorn, C. shall not in that case have his election to make this an annuity, but must take it as a rent charge. Co. Litt. 150.

How an annuity is said to be personal.

When an annuity is said to be *personal*, not *real*, it is not to be understood to be that species of personalty which vests without any specific bequest in the executors. If proceeding out of the personal estate

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*of the grantor, it is personal only as to the remedy, but properly real as to its descent to heirs. *Turner* v. *Turner*, Ambl. 782; 1 Bro. Ch. Ca. 324. So in Lord *Stafford* v. *Buckley*, 2 Ves. sen. 179, Lord *Hardwicke* said, all the rest of the personal estate, that could pass to executors, would go to them: but this is a kind of personalty which, according to *Doctor and Student*, p. 90, 18th ed. would not be assets in executors, and consequently will not go to them by being named executors: an annuity in fee being a personal inheritance, which the law suffers to descend to the heir, but has nothing to do with the realty, as appears from Co. Litt. 20.

Rent-charge without charging the person.

Littleton says, if a man would that another should have a rent charge issuing out of his land, but would not that this person be charged in any manner by a writ of annuity, then he may have such a clause in the end of

sents, have in themselves good right, &c. *(Add the remainder of the covenants, ut ante,* p. 555; *and for further*

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his deed. *Provided always, that this present writing, nor any thing therein specified, shall any way extend to charge my person by a writ or an action of annuity, but only to charge my lands and tenements with the yearly rent aforesaid, &c.* Then the land is charged, and the person of the grantor discharged. Litt. s. 220. For the operation of this sort of *proviso,* see Dy. 222 a, and 2 Co. 72 a. Thus it appears, that when in a general grant the law gives two remedies, the grantor may provide that the grantee shall not use one of them, and leave the party to the other. Co. Litt. 286 b. But where the grantee has but one remedy, there that remedy cannot be barred by any proviso, for such a proviso would be repugnant to the grant. Co. Litt. 146 a. 2 Vin. Abr. 508, pl. 7.

Annuity of lands in two counties.

If a rent be granted out of land in two counties, an assize does not lie, but a writ of annuity: the reason being, it is presumed, because the lands of both counties cannot be put in view of the recognitors of the assize. But Brooke particularly says, that if a man grant rent out of land in one county, and give a power to distrain for it upon land in another county, and he bring assize, the assize shall be in the first county; but if both lands lie in the same county, they shall be both put in view. Bro. Abr. *Rentes,* pl. 22; Co. Litt. 147 a; 7 Co. 23 b.

Annuity granted by two persons.

If A. be seised of lands in fee, and he and B. grant a rent charge to one in fee, this *primâ facie* is the grant of A. and the confirmation of B.; but yet the grantee may have a writ of annuity against *both.* So if two men grant an annuity of twenty pounds *per annum* to another, although the persons be several, yet he shall have but one annuity: but if the grant be *obligamus nos et utrumque nostrum,* the grantee may have a writ of annuity against *either* of them; but he shall have but one satisfaction. Co Litt. 144 b. *vide ante,* p. 502, n. (*a*).

A personal annuity is assignable.

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say; that he the said [*grantor*] and [——] his wife, now at the time of the sealing and delivery of these pre-

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Of the determination of the election.

Neither the presumption of law, nor the *express grant as rent*, shall take from the grantee the benefit of his election, where no default was in him. Therefore, said Chief Justice *Popham*, if a *rent charge be granted in tail*, the grantee may bring a writ of annuity, and thereby prejudice his issue, because then it shall not be taken to be an intail, but as *a fee simple conditional* ab initio. *Fulwood* v. *Ward*, Poph. 87. If the grantee of a rent bring an assize for it, he shall never after have an annuity; because, by bringing the assize, he has elected it to be a rent. But this determination of the election of a grantee must be by action or suit in a Court of record; for although the grantee distrain for the rent, yet he may bring a writ of annuity and discharge the land. But if the grantee bring a writ of annuity, and at the return thereof appear and count, this is a determination of his election in a Court of record, although he never proceed any further. So, if the grantee bring an assize for the rent, and make his plaint, he shall never after bring a writ of annuity. But the purchasing a writ of annuity, and entry of it in a Court of record, or of an assize, is no determination of the election; because a stranger may purchase a writ in the name of the grantee, and enter it of record; but if the grantee appear thereto, &c. that amounts to a determination of his election, as it has been said. Co. Litt. 145 a. So, an avowry in a Court of record, which is in the nature of an action, is a determination of his election before any judgment given. Co. Litt. 145 b. So, if A. grant a rent charge to B., which is paid to him, and then B. grant it over to C., and the tenant of the land attorn, C. shall not in that case have his election to make this an annuity, but must take it as a rent charge. Co. Litt. 150.

How an annuity is said to be personal.

When an annuity is said to be *personal*, not *real*, it is not to be understood to be that species of personalty which vests without any specific bequest in the executors. If proceeding out of the personal estate

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*of the grantor, it is personal only as to the remedy, but properly real as to its descent to heirs. *Turner* v. *Turner*, Ambl. 782; 1 Bro. Ch. Ca. 324. So in Lord *Stafford* v. *Buckley*, 2 Ves. sen. 179, Lord *Hardwicke* said, all the rest of the personal estate, that could pass to executors, would go to them: but this is a kind of personalty which, according to *Doctor and Student*, p. 90, 18th ed. would not be assets in executors, and consequently will not go to them by being named executors: an annuity in fee being a personal inheritance, which the law suffers to descend to the heir, but has nothing to do with the realty, as appears from Co. Litt. 20.

Rent-charge without charging the person.

Littleton says, if a man would that another should have a rent charge issuing out of his land, but would not that this person be charged in any manner by a writ of annuity, then he may have such a clause in the end of

sents, have in themselves good right, &c. *(Add the remainder of the covenants, ut ante,* p. 555; *and for further*

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assurance from the grantor and his wife, and the heirs of the wife; and defeazance on judgment, ut ante, p. 557; *and*

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resolved being, that express words would make such an annuity assignable Hargr. n. Co. Litt. 144 b. (1).

The heirs are not bound, unless named in the grant.

If a man grant an annuity to another and his heirs, without saying for *himself and his heirs*, it shall determine by the death of the grantor, although he may so grant a rent out of land, or a rent charge, of which he is seised; for the rent charges the land, and the annuity the person only. Bro. Abr. *Charge*, pl. 54; and *Estates*, pl. 65. So, if a rent charge be granted to a man and his heirs, he shall not have a writ of *annuity* against the heir of the grantor, although he has assets, unless the grant be for him and his heirs. Co. Litt. 144 b. The reason is, because our law presumes that it is not intended to include the heir in the obligation, when he is not named; and consequently, in the case supposed by Lord Coke, it is too late to elect to make the rent charge an annuity after the death of the grantor. *Vide* Co. Litt. 383 b, 384 b, 386 a; 10 Co. 128 a; 2 Vin. Abr. 505, *Annuity* (B). It would be the same, though the grantor should by his deed oblige himself and his heirs to warrant the annuity to the grantee and his heirs; for this does not enlarge the grant: *car garanty ne poit amender un estate.* Plowd. Ann. 236. In *Bodvell* v. *Bodvell*, Cro. Car. 170, the Court held, that an annuity which charges the person who grants it, though with a clause of distress, not being granted for *himself and his heirs*, until election made and a distress taken, is merely personal; and therefore that a release of actions personal is clearly a bar.

Successors of bodies politic are bound without being named in the grant.

But this reasoning fails in application, if the grantor of the annuity be a body politic, and as such has perpetual continuance. Hargr. n. Co. Litt. 144 b, (2). As, if formerly an abbot, with consent of his convent, had, by deed under their common seal, granted an annuity to another in fee, without saying for *him and his successors*, [*585] yet would his successors have been charged with the annuity. And so it was adjudged in Sir *Thomas Wroth's* case, that although the king had granted to him an annuity, without saying in the patent for his *heirs and successors*, yet that it would bind his successors; for he granted it as king in his political capacity, which is perpetual and never dies, but has continuance in his successor. Plowd. 457.

A void rent charge may be a good annuity.

Where a person intending to grant a rent does it in such a manner as to be void as a rent, yet it shall be generally good as an annuity: as, if the land, out of which it is to be issuing, do not belong to the grantor; the fund, with which it is charged, be insufficient; the person directed to pay it be misnamed; or the sources, out of which it is to arise, be uncertain, precarious, or imaginary. For, in general, the words in the deed, *to per-*

The word *per-*

clause for repurchasing the annuity, ut ante, p. 543 *or* 559.) IN WITNESS, &c.

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ceive out of, operate as a limitation, from whence the grantee is to receive what is granted. And this difference is taken, that where it is granted by the name of parcel of another rent, &c., if the grantor have no such rent, the grant is wholly void: and where it is granted to perceive of such a sum, &c. it is good to charge the person by the word *perceive*. Bro. Abr. *Grauntes*, pl. 4; 2 Vin. Abr. 507, (E).

ceive charges the person.

If a man have a rent charge to him and to his heirs, issuing out of certain lands, if he purchase any parcel of this land to him and to his heirs, all the rent charge is extinct. Co. Litt. 147 b. And the annuity also, if he did not elect to charge the person before he made the purchase; Dyer, 140 a, pl. (20); Gilb. Rents, 152; because the rent charge cannot by such manner be apportioned. But if a man, who has a rent service, purchase parcel of the land out of which the rent is issuing, this will not extinguish all, but only for the parcel. Gilb. Rents, 151—152; Co. Litt. 148 a. For a rent service in such case may be apportioned according to the value of the land. But if a man hold his land of his lord by the service, to render to his lord yearly, at a certain feast, a horse, a golden spear, or a clove, gilliflower, or the like; if in this case the lord purchase parcel of the land, such service is taken away, because such service cannot be severed nor apportioned. Litt. s. 222; and see Noy's Tenures, 6, 7, 8. 292, 293, 294, 9th ed. Noy's Max. So if the grantee of a rent charge take a lease of the land for years, he shall not after the years are ended have his election to make this an annuity. *Fulwood* v. *Ward*, Poph. 87. So, wherever an annuity is granted for the performance of any duty or service, and the grantee refuses or neglects to perform it, the annuity becomes extinct. Co. Litt. 402 a. As in the instances of lawyers and physicians, *pro concilio impenso et impendendo*, with this difference, that the physician must go to his patient, though the client *must attend [*586] or write to the lawyer. Bro. Abr. *Annuitie*, pl. 7, pl. 18; 2 Vin. Abr. 514, pl. 2. Yet in *Mingie's* case, Poph. 135, a writ of annuity was brought by him *pro concilio impenso et impendendo;* defendant pleaded in bar, that he carried a bill to the plaintiff to be signed, and because he refused, he detained the annuity: and *per curiam*, this is no plea; for he is bounden to give advice, but not to set his hand to every bill, for this may be inconvenient to him. So, if an annuity be granted to a man for keeping a park, and the game be not preserved through his fault, that is an extinguishment of the annuity. Bro. Abr. *Annuitie*, pl. 49. Upon the same principle, if an annuity be granted *pro decimis*, and the grantee be unjustly disturbed of the tithes, the annuity ceases: for these being the express considerations of the annuities, they are thereby rendered condi-

How annuities become extinct, and how apportioned.

tional. Co. Litt. 204 a. So again, if an annuity be granted *pro homagio et servitio*, and the grantor disclaim the services in a writ of annuity, the annuity is extinct. Bro. Abr. *Extinguishment*, pl. 37. And if an annuity be granted so long as the grantee is *benevolens, proferens, et amicabilis* to the grantor, and the grantee labour to put the grantor out of service, it is a forfeiture of the annuity. Bro. Abr. *Annuitie*, pl. 35; and *Double plee*, pl. 100.

A rent in fee does not escheat on failure of heirs, but sinks into the land.

A rent differs materially from land; because the old principles of the feudal law looked upon every modification of landed property, which was considered to be against common right, with a very jealous eye. Upon this principle, the law, in most instances, avoided giving by implication a continuance to the rent, beyond the period expressly fixed for its continuance. Thus, if a rent be granted to a man and his heirs generally, and he die without devising the rent, and without an heir, the rent does not escheat, but sinks into the land. Butl. n. Co. Litt. 298 a, (2); Vaugh. 39. And as a devise, though it only takes effect at the moment of the testator's death, will prevent an escheat; 3 Cru. Dig. 440, s. 21, 2d ed.; so it seems, by analogy, that a devise will prevent the rent from sinking into the land. But it seems there must be an express devise of the rent, and not a mere authority to sell. *Reeve* v. The *Attorney General*, 2 Atk. 223. *sed vide contra*, Lord Nottingham's MS. n. Co. Litt. 236 a, (1).

It seems, an express devise will prevent the rent from sinking into the land.

The reason why a rent charge determines on the death of grantee, without heirs.

The reason why the grant of a rent out of lands to a man and his heirs, determines on his death without heirs, is, because such grants are, as it is termed in the law books, *against common right*: Co. Litt. 147 b: that is, they were against the policy of the *feudal structure*. Gilb. Rents, 133. For, in their original creation, they were against the

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reason and policy of that law; since they were so far from contribut*ing to the strength of the kingdom, that they really weakened it, because the *tenant*, whose land was subject to such charge, was the less able to provide himself for the field, or to perform the duties of the feudal or military tenure; and the *grantee* of a rent charge was under no obligation to attend the grantor in the wars, or venture his life for the public, on account of the benefit he received from the grant, as the person who took lands under a *feudal donation* was obliged to do. Noy's Tenures, 296, 6th ed. It is upon this principle, that when there is not a limitation over in fee, a tenant in tail of a rent acquires, by his recovery, no more than a base fee, determinable on failure of his issue. But if there be a limitation in fee, after the particular limitation in tail, the grantor has substantially limited the rent in fee; and therefore it is doing him no injustice that the recovery should give the donee, who suffers it, an estate in fee simple. Butl. n. Co. Litt. 298 a, (2).

How a rent, *pur autre vie*, becomes extinct.

There cannot be an *occupant* of any thing which lies in grant, and which cannot be conveyed without deed; 2 Roll. Abr. 150, *Occupant*,

(C) pl. 1; Co. Litt. 41 b, 388 a; such as rents, advowsons, commons, reversions, remainders, &c., because these things have no actual existence, except *in jure et intellectu;* 2 Bla. Com. 21; and the only means the law gives to gain an estate by occupancy, is by entry. Bridg. 94. But no *entry* can be made into a thing which has no real existence, consisting purely in the agreement of the parties, and depending on the institutions of society for its being. 2 Bac. Abr. 562, 567, *Estate for Life and Occupancy*, (B) 1, (3); 3 Bac. Abr. 371, *Grants;* 16 Vin. Abr. 70, *Occupant*, (B). Therefore, if a rent be granted to A. for the life of B., and A. dies, living B., the rent determines upon the death of A., equally as if it had been granted to him for his own life. Vaugh. 199. So if a man grant a rent to another, his executors and assigns, for the life of J. S., and afterwards the grantee die, making an executor, but no assignee; the executor shall not be a special occupant, because it is a *freehold* which cannot descend to the executor, and the rent is extinct. *Buller* v. *Cheverton*, 2 Roll. Abr. (R) pl. 3, 151—2; *Salter* v. *Butler*, Noy, 46; Cro. Eliz. 901; Yelv. 9; *Salter* v. *Boteler*, Moore, 664, *S. C.* Rent granted to one, his executors, and administrators, *pur autre vie*, and the grantee dies, it shall not go to the administrator, as special occupant, but determines by the death, unless there has been an assignment, as mentioned *post-quam*, p. 588. *Salter's* case, Hale's MS. Hargr. n. (4); Co. Litt. 41 b. So if a man grant a rent charge to another for the life of J. S., the remainder to the right heirs of J. S.; and the grantee die, living J. S.; the rent ceases for the benefit *of the tenant of the land; *quia nemo est hæres* [*588] *viventis;* Noy's Tenures, 75, 371, 9th ed. Noy's Maxims; but if J. S. die, living the *autre vie*, his heir shall have the rent after the death of the *autre vie*. *Salter* v. *Butler*, Noy, 47. If a rent be granted to J. S. and his executors, during the life of B., by the death of J. S., the rent is determined; because, says Chief Baron *Gilbert*, the executors cannot take as special occupants, since the nature of the thing lying in agreement, is not capable of occupation; nor can they take by the grant, because then they must take as representatives, which they cannot be of a freehold; and the law will not permit people at their pleasure to vary the course of descents. So, he says, if rent be granted to A., his executors and assigns, during the life of B., and A. die intestate, the administrator cannot claim the rent; not as occupant, because no man can make himself a title to a rent by way of occupancy; not by the deed, because he is not assignee within the words of the grant by the letters of administration; therefore the rent is determined, since none can claim it as occupant. 2 Bac. Abr. 566—7, *Estate for Life and Occupancy* (B), 3. So if the tenant *pur autre vie* of a rent assign or convey it to another, without naming his heirs, the rent would determine on the death of the assignee in the life of the *autre vie*, because the assignor could not have any right, as it would have been contrary to his own grant, if he claimed an interest which he had

transferred to another; and the assignee being dead, his descendants could not claim, because they were not comprehended in the words of the assignment. 2 Bac. Abr. 561, *Estate for Life and Occupancy* (B).

How a rent *pur autre vie*, may be preserved for the heir of the grantee.

If the rent be originally limited to the grantee and his heirs, during the life of *cestui que vie*, the heir of the grantee shall have the rent, because it is a descendible freehold; Vaughan, 201; 3 Atk. 708; and the grantee or his heir may assign it to whom they please for the life of *cestui que vie*. Co. Litt. 41 b, 388 a. *Vide Vernon* v. *Gatacre*, Dyer, 253. But if the grantee of a rent for another man's life, not originally limited to his heirs, wishes to preserve it for his heirs, in case he should die before the *cestui que vie*, then he should, as mentioned in the cases cited *ante*, p. 587, by a deed to take effect in his life-time, convey or assign his estate in the rent to another man and his heirs, either in *trust* for the grantee and his heirs, or to the *use* of the grantee and his heirs during the life of the *cestui que vie;* the latter method seems to be preferable, because it would immediately execute the legal estate in the rent in the tenant *pur autre vie*, and his heirs, by the statute of uses. 27 Hen. VIII. c. 10, s. 4; Gilb. Uses, 86, 281, 287; Sugd. ed. 193. Butl. n. Fearne's Rem. 529.

It seems, before 29 Car. II. c. 3, s. 12, no estate *pur autre vie*, was devisable.

Before the statute of frauds, it seems, according to the better *opinion, that no estate *pur autre vie* could be devised under the statutes of wills, 32 Hen. VIII. c. 1, and 34 & 35 Hen. VIII. c. 5. In *Gawen* v. *Ramtes*, Cro. Eliz. 805, Moor, 625, *S. C.*, the Court was equally divided upon this point; but *Popham*, C. J., said, that the greater part of the judges were of his opinion, that such an estate was not devisable under these statutes. See Dyer, 253 b, (100); *Sherewood* and *Nonne's* case, 1 Leon. 252, *ultimo; Salter* v. *Butler*, Noy, 47.

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Any estate *pur autre vie*, may be devised:

By the statute for preventing frauds and perjuries, 29 Car. II. c. 3, s. 12, it is enacted, "that from henceforth *any* estate *pur autre vie*, shall be devisable by will in writing, signed by the party so devising the same, or by some other person in his presence, and by his express directions, attested and subscribed in the presence of the devisor by three or more witnesses; and if no such devise thereof be made, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of a *special occupancy*, as assets by descent, as in case of lands in fee simple; and in case there be no special occupant thereof, it shall go to the executors or administrators of the party that had the estate thereof by virtue of the grant, and shall be assets in their hands."

if no devise, shall be assets in the heir:

and if no special occupant, shall be assets in the executors;

and be distributed as personal estate.

By Mr. Fazakerly's act, 14 Geo. II. c. 20, s. 9, after reciting the above section of 29 Car. II. c. 3, it is enacted, "That such estates *pur autre vie*, in case there be no special occupant thereof, of which no devise shall have been made according to the said act, for prevention of frauds and perjuries, or so much thereof as shall not have been so devised, shall go, be applied, and distributed, in the same manner as the personal estate of the testator or intestate."

As by the statute of frauds, any estate *pur autre vie* may be devised, it seems, by analogy to the case of escheat, that if a rent *pur autre vie* be limited to a man and his heirs, and he make a devise, and die without heirs, the devisee would be entitled to the estate in the rent, and that the rent would not sink into the land. *Vide ante*, p. 586.

Devise of a rent *pur autre vie*, prevents it sinking into the land, on failure of heirs.

The late Mr. Hargrave, after *Salter's* case, cited *ante*, p. 587, adds, "However some have thought that executors and administrators, if named in the grant, might take an estate *pur autre vie*, though a *freehold*, even before the 29 Car. II. c. 3, and 14 Geo. II. c. 20, by which they are now entitled. See 3 Atk. 466, the authority relied on is Dy. 328 b." Hargr. n. Co. Litt. 41 b, (4). *Vide* Noy's Max. 103, 105, 9th ed. This observation is very general, and it may be doubted whether Mr. Hargrave intended it to apply to rents, or any other incorporeal estate granted *pur autre vie*.

It has been supposed that by virtue of the statute of frauds, an estate *pur autre vie* in a rent, continues for the executors or administrators of the grantee, when it is not limited to his heirs.

So the late Mr. Fearne says, "it seems, indeed, that in these cases of rents *pur autre vie*, upon the death of the grantee before the *cestui que* *vie* (though strictly there is no general occupancy of rent), the terre-tenant, by holding the land discharged, *i. e.* retaining the rent, might, perhaps, be considered in the *nature* of an *occupant* of the rent; and therefore, in that view, the particular estate might be understood to have a continuance, sufficient even to support a contingent remainder. But at this day *it seems* there can be no room for a question of that nature; for since the statutes of 29 Car. II. c. 3, and 14 Geo. II. c. 20, the rent is holden to continue in the representatives of the grantee dying in the lifetime of the *cestui que vie*." Fearne's Cont. Rem. 233, 3d ed. 452, 5th ed. 306, 7th ed. for which he cites the following note to the first edition of 3 Peere Williams, 264, [D]; and *Kendall* v. *Mickfield*, 3 Barnadiston's Rep. in Chan. 46.

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"As to rents granted *pur autre vie*, the statute of frauds and perjuries has made an alteration; for, by that statute, any estate *pur autre vie* is made devisable, and, if not devised away, shall be assets in the hands of the heir, if limited to the heir; if not limited to the heir, it shall go to the executors or administrators of the grantee, and be assets in their hands. So that, if since that statute a rent be granted to A., for the life of B., and A. die, living B.; A.'s executors or administrators shall have it during the life of B.; for the statute is not only made to prevent the inconvenience of scrambling for estates, and getting the first possession after the death of the grantee; but likewise for preserving and continuing the estate during the life of the *cestui que vie*; and it is reasonable, since the grantee might by deed have disposed of the rent during the life of the *cestui que vie*, that, though by his dying without having made any such disposition, in nicety of law this estate would have determined; yet, by the statute, that interest which passed from the grantor ought to be preserved, and shall go to the executors or administrators of the grantee during the life of the *cestui que vie*. And the statute in this case does not enlarge, but only

preserves the estate of the grantee. By the Lord Keeper *Harcourt*, in the case of *Rawlinson* v. The *Duchess of Montague et al.* 4th of Dec. 1710, *though this was not the principal point.*" 3 P. Wms. 264 [D]; 2 Eq. Ca. Abr. 394. See the real point in *Rawlinson* v. *Duchess of Montague*, 2 Vern. 667.

The point determined by the case of *Kendall* v. *Mickfield*, 3 Barn. Ch. Rep. 46, 15 Vin. Abr. 457, cited by Mr. Fearne, does not affect the present question; it was a mortgage of a rent charge of 160*l.* a-year for three lives, to J. S., his executors, administrators, and assigns, *to hold* to him, his heirs and assigns, *upon trust*, that J. S., his executors, administrators, and assigns, should enjoy 100*l.* *a-year of it, till the mortgage money was satisfied; and it was determined that the legal estate of this rent belonged to the heir at law, but that he was a trustee for the executor of J. S. But the Master of the Rolls said, the question is, whether the statute of frauds and perjuries has not altered the law in this respect? and whether a rent is not within the relief of that act of parliament, as well as any other sort of inheritance? And his Honour was of opinion, that it was; because, as he said, the statute intended to make a general alteration with regard to all sorts of estates, that were granted *pur autre vie;* and, he added, a rent charge is as much within the intention of that act of parliament, as any other hereditament. 3 Barnardis. 49.

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So Dr. Wooddeson, in his Vinerian Lectures, says, "There never could be a general or common occupant of incorporeal hereditaments, as of a rent; but a special occupant there may be, if a rent be granted to a man and his heirs, during the life of another person. 3 Wms. 264. Here therefore I must take notice of an opinion of Sir William Blackstone, 2 Black. Comm. 260, who holds, that since the statutes which have abolished the title by common occupancy, if a rent should be granted to A. during the life of B., without mentioning the heirs of the grantee, and the grantee should die in B.'s life-time, the estate would be determined, and would not survive to the executors or administrators under the protection of those statutes. This seems founded on two unstable principles: first, that there could, at common law, be no occupancy at all of an incorporeal hereditament, whereas there might be a special occupant; secondly, that if the statutes were to be extended to this case, it would be *creating* a residue, on purpose to give it to the executors; whereas at common law, the rent would not have determined from the proper effect, tenor, and extent of the grant, but only because no person could entitle himself to it by occupancy, properly so called, the thing being of an incorporeal kind. The former of the statutes therefore does not, strictly speaking, create, but preserve and continue the estate, by providing a claimant to enjoy all that interest *which passed out of the grantor, and which might have been disposed of by the original grantee in his life-time.* Therefore, I cannot adopt the opinion in this instance of the learned commentator on the laws of

England, which is moreover discredited by a judicial authority; 3 Wms. 264, n. D.; and see ibid. 33, n. B.; though it was not in that case the principal matter which awaited the determination of the court; and the sentiments of lawyers are still divided on this occasion." 2 Wooddeson's Lectures, 271.

So Mr. Sanders, after citing *Buller* v. *Cheverton*, *ante*, p. 587, and stat*ing [*592] the 12th section of the statute of frauds, says, "since this statute, the executor or administrator may be a special occupant of a rent. See *Rawlinson* v. *Montague*, cited note D. 3 P. W. 264." 2 Sand. Uses, 248, 3d ed. 306, 4th ed. (But how can there be an occupant of that which is not capable of occupation?) And see Sand. Uses, 376, 1st ed. 2 Sand. Uses, 268, 2d ed. Sand. n. 2 Atk. 467; and note the vacillation.

Having stated the opinions in favour of the proposition, that, by the statute of frauds and perjuries, the common law is so far altered, that an estate *pur autre vie* in a rent continues for the executors or administrators of the grantee of the rent when it is not limited to his heirs;—and that, since this statute, an executor or administrator may be a special occupant of a rent; *i. e.* may take it by way of limitation, although it be a descendible freehold; 2 Sand. Uses, 249, 3d ed. Sand. n. 2 Atk. 467;—and having shewn that there is no other authority for such a conclusion than the *dicta* of two Judges when the question was not before them; it now remains to state the opinions contrary to the above proposition.

The better opinion is, that the statute has made no alteration in the common law doctrine as to estates *pur autre vie* in rents.

Thus, Lord Chief Justice Holt, in the reign of Queen Anne, in a case in which the question of occupancy was before the Court, said, "If a man grant a rent out of his lands to A., for the life of B., shall not the rent extinguish if A. die? for there wants a grantee." *Smartle* v. *Penhallow*, 2 Ld. Raym. 1000. So, in another report of the same case, it was agreed by the whole Court, that "if rent be granted to one for three lives, and he die without disposition, living *cestuy que vies*, yet the grantor shall hold the land discharged; because occupancy cannot be of a rent, for that only can be of lands which pass by livery, whereby the freehold passes, and shall not revert again until the limitation be determined; and it is for the sake of a *præcipe* of a stranger." *Smartle* v. *Penhallow*, 6 Mod. 68. So Lord Chief Baron Comyns, in his Digest, *Estates* (F. 2), long after the statute of frauds, says, "there cannot be an occupant of a rent. Co. Litt. 41 b; Cro. Eliz. 721, 901; R. Mo. 664; 2 Roll. 150. 1. 48. And things, of which there cannot be an occupant, determine by the death of tenant for life. Vaugh. 201. And if there be a remainder limited upon his estate, it commences immediately. *Per* Poph. Mo. 664." So Lord Chief Baron Gilbert, many years after the statute of frauds, deliberately and decidedly states his opinion, that personal representatives could not take a freehold estate lying in grant, although it were expressly limited to

them at the time of its creation. *Vide ante*, 588. So Lord Hardwicke, eleven years after the statute of George the Second, clearly expresses his opinion, that the law was not altered in respect to estates *pur autre vie* in rents.

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Annuity out of personal estate bequeathed to A. during life of another person, A. die in the life of the other person; held, that the annuity continues for A.'s executor.

*So, in the case of *Savery* v. *Dyer*, Ambl. 139, which is thus stated: "Richard Dyer, by will, gives to his kinsman, John Savery, during the natural life of his executor, one annuity or yearly sum of fifty pounds, to be paid him by his executor, by equal quarterly payments, to commence from his decease; and appointed A. B. executor. John Savery died after the testator, in the life-time of the executor. Whether the annuity determined on his death, or is transmissible to his executors? Lord Chancellor Hardwicke, after argument—

Aliter if such devise of annuity be charged on real estate.

"The whole depends upon the question, whether the annuity determined on the death of the annuitant? shall lay down some *postulata*. 1st. This case must be determined on the rules of law, the same as a grant would be; for there are no particular directions in the will to shew it should be a mere personal annuity, as in that case cited out of Prec. in Ch. 173, nothing arises from intention.

"2d. It is to be considered as an annuity arising out of the personal estate, consequently it is a personal annuity: and the real estate, by this will, cannot be charged with it; or, if it is, it can only be considered as a security or supplemental fund to the personal estate.

"Am of opinion the annuity did not determine, both upon the reason of the thing, and the cases determined. No authority in point has been cited at the bar; though I have found one or two that come near it.

"An annuity is a personal thing, and in order to be given to another wants no words of limitation; if it is to continue after the death of the annuitant, it goes to his executors.

"There is a difference between an annuity existing at the time of the will, and one created by it *de novo*.

An annuity devised *de novo* to A., he shall take it for life.

"If one gives by will an annuity, not existing before, to A., A. shall have it only for life; for if A. might give it to his executors, it might go from executors to executors for ever. If personal annuity would go so, how would it be in case it was given to A. during the life of B.? It was said, that as without these words, *viz.* 'during the life of B.' it would go to the devisee for his life, so these words are a restriction on the estate, and make it a joint estate for both their lives. Consider the reason: *if a rent charge out of lands is granted, it will be so from necessity; it shall determine with the life of the grantee; the reason, it is a realty and cannot go* "3 Wms. 264." *to the executor. It cannot go to the heir, because it is not fee simple, tail, nor conditional, nor does he take* nominatim; *there cannot be any occupancy* (Dy. 186; Cro. El. 721. 901), *because it does not lie* in prendre, *there is no necessity for the law to cast the freehold in any body, as in the case of* "*Holden* v. *land; no body can take.* See if the reasons of the case of rent hold in

personal annuities. They do not. The executors can take personal annuities; if A. die in the life-time of B., what necessity then for determining it on A.'s death? The executors taking, affords an answer to the argument made by defendant's counsel, that the words, 'during the life of B.' are a restriction on the estate for life of devisee; such restriction could only be by implication: and as the testator has given an express limitation, it destroys that implication. 1 Ro. Abr. 831, pl. 5. One possessed of a term grants an annuity generally, and it was a grant for the whole term. *Gosley* v. *Gilford*, 2 Vern. 35, determined on the authority of the former. There is no difference between those cases. This does not differ from many cases on a will. Suppose one gives the interest on a bond, or a sum of money, to A., during the life of B.; A. dies in life of B.; shall not his executors have the interest during B.'s life? There can be no doubt but they shall. I am of opinion, that the annuity is continuing, and that John Savery's executors shall have it during the life of the testator's executor. Am not concerned whether the law is so, for it seems to agree with the *intention of the testator*. Decree for plaintiff, an account, &c." And see *S. C.* 1 Dick. 162.

Smalbrook, Vaug. 199, 200."

" *V. Rawlinson* v. *Duchess of Montague*, 2 Vern. 667."

So the author of the Commentaries says, " as before the statutes, there could no common occupancy be had of incorporeal hereditaments, as of rents, tithes, advowsons, commons, or the like, Co. Litt. 41; Vaugh. 201, (because, with respect to them, there could be no actual entry made, or corporal seisin had: and therefore, by the death of the grantee *pur autre vie*, a grant of such hereditaments was entirely determined,) so now, I apprehend, notwithstanding these statutes, such grant would be determined likewise; and the hereditaments would not be devisable, nor vest in the executors, nor go in a course of distribution. For these statutes must not be construed so as to create any new estate, or keep that alive which, by the common law, was determined, and thereby to defer the grantor's reversion; but merely to dispose of an interest in being, to which by law there was no owner, and which, therefore, was left open to the first occupant. When there is a residue left, the statutes give it to the executors and administrators, instead of the first occupant; but they will not *create* a residue on purpose to give it to either. They only meant to provide an appointed instead of a casual, a certain instead of an uncertain, owner of *lands*, which before were nobody's; and thereby to supply this *casus omissus*, and render the disposition of law in all respects entirely uniform; this being the only instance wherein a title to a real estate could ever be acquired by occupancy." 2 Bla. Com. 260.

And in *Zouch* v. *Forse*, 7 East, 193, Mr Justice Lawrence said, *" the object of the statutes was to provide for the *occupation* of estates [*595] *pur autre vie*, which, upon the death of the owners, no person had a present right to *occupy*, and to apply them for the benefit of the creditors and representatives of the former owners." See also 2 Watk. Cop. 196;

Pres. Watk. Conv. 37; *Campbell* v. *Sandys*, 1 Scho. & Lefr. Irish Chan. Rep. tem. Lord *Redesdale*, 288; *Ripley* v. *Waterworth*, 7 Ves. 425; Noy's Max. 103, 105, 9th ed.; 1 Cru. Dig. 124, 2d ed.; Sug. Pow. 187, 189, 2d ed. 197, 3d ed.

Conclusion as to estates *pur autre vie* in rents: 1st, the power to devise:

Thus it appears, according to the better opinion, that, by the statute of frauds, any estate *pur autre vie* which would have continuance after the death of the owner of the estate *pur autre vie*, may be devised; such as an estate in land *pur autre vie*, limited to the tenant and his heirs, or not limited to the heirs; because, in the latter case, the estate would have had continuance, and belonged to the general occupant, who first entered for the remainder of the life of the *cestui que vie;* or such as a rent, or other incorporeal hereditament limited to the grantee and his heirs for the life of another person; because, in the latter case, the estate in the rent, &c. would have had continuance in the heir after the death of the grantee. But, that, if a rent, or other incorporeal hereditament, be limited for the life of another person to the grantee and his personal representatives, or be limited to him without naming any representatives whatever, although he may, by the common law, by a deed to take effect in his life-time, convey or assign it for the life of the *autre vie; ut ante*, p. 588; yet the statute of frauds does not enable the grantee to devise such a rent, but it sinks into the land on the death of the grantee *pur autre vie*, as it would have done before the statute; because there is no recital, nor any words in the statute of frauds, shewing the intention of the legislature to give continuance to an estate *pur autre vie* in a rent, or any other estate lying in grant, which would have sunk into the land before that statute.

2d, the continuance for personal representatives.

As the words of the statute of frauds, giving estates *pur autre vie* to executors or administrators, only extend to those cases in which there could be *an occupant* at common law, and which in rents, &c. it clearly appears there could not be; *ante*, p. 587; therefore, if an estate *pur autre vie* in a rent, &c. be limited to a man and the *heirs of his body*, and he die without issue inheritable, having devised the estate; as according to the better opinion, the devise would be void, it being a *quasi* estate tail; *Saltern* v. *Saltern*, 2 Atk. 376; *Campbell* v. *Sandys*, 1 Scho. & Lefr. 281; *sed vide* *Doe* dem. *Blake* v. *Luxton*, 6 Term Rep. 293; *ante*, p. 159 (*a*); it seems that the estate in the rent would not continue for the executors or administrators, but would sink into *the land. Or if such an estate in a rent, &c. be limited to a man and his heirs, and he die without devising the rent, and without heirs, *vide ante*, p. 589, it seems that his executors or administrators would not be entitled to the rent, but that it would sink into the land. *Vide* 3 P. Wms. 33, [B].

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When a rent charge ceases, incident remedies for recovering it cease also.

If an annuity or rent charge *pur autre vie* cease for want of proper words of limitation, it is clear that the specific remedies which the law has provided, independently of the contract of the parties, for recovering the

annuity or rent charge, during its continuance as an annuity or rent charge, in the strict sense of the word, must cease also: but whether, in a Court of law, any collateral security, such as a covenant, bond, judgment, &c. for paying the annuity or rent charge to the grantee, his executors, administrators, and assigns, during the life of the nominee, be affected by the determination of the grant for want of proper words of limitation, is not so certain; although the prevailing opinion is, that the only remedy the executors or administrators have in such a case is in a Court of equity. See *Plunket* v. *Brereton*, 1 Chan. Rep. 4.

How a rent *pur autre vie* may be in effect limitted to executors and administrators.

To prevent all doubt, when it is the grantee's intention that an annuity or rent charge *pur autre vie* should form part of his personal estate, it should be granted to him, his executors, administrators, and assigns, for ninety-nine, or any other sufficient number of years, if the nominee or the nominees, or the survivors or survivor of them, should so long live. *Vide post*, p. 628.

The reason of stating when the writ of annuity, and when the action of debt lies.

Although the action, by a writ of annuity, is at present out of use, 1 Tidd's Prac. 4, 7th ed. being superseded by the action of debt or covenant, *where these remedies can be pursued*, yet it seems proper to state, when a writ of annuity, and when an action of debt lies, in order to give a general view of the subject; and because there are cases in which no other action besides the writ of annuity lies.

Where the writ of annuity shall not be had.

If a rent charge be granted to A. and B. and their heirs, and A. distrain the beasts of the grantor, and he sue a replevin, and A. avow for himself, and make conusance for B., and A. die and B. survive him; B. shall not have a writ of annuity; for in that case the election and avowry for the rent by A. bars B. of any election to make it an annuity, although he assented not to the avowry. Co. Litt. 146 a. In all cases, where the rent charge is apportioned by act in law, the writ of annuity fails; for if the grantee should bring a writ of annuity, he must ground it upon the grant by deed, and then he must bring it for the whole. For, as in the case of dower, *ante*, p. 580, if the heir should bring annuity for the remainder of a rent charge, after the widow had been endowed of a third, it would not be according to the deed of grant, for either the whole must be a rent charge, or the whole an annuity. Co. Litt. 144 a.

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For an annuity, strictly so called, there only lies a writ of annuity during its continuance.

*For the arrears of an annuity in fee; in tail, or for life, so long as the estate of freehold has *continuance*, there lies no action, but only a writ of annuity against the grantor, his heirs, or successors, provided they be included in the obligation or grant. Com. Dig. *Dett.* (A. 7). But if an annuity be granted for years, it seems doubtful whether an action of debt lies for it during the continuance of the term. In *Browne* v. *Pendlebury*, Cro. Eliz. 268, (4), it was held, that debt lies upon a grant for years during the term, because it is by the deed as a *contract*. So, in *Bendloss* v.

But for an annuity for years, it has been held, that an action of debt lies dur-

ing its continuance; yet the better opinion is contrary.

Phillips, Cro. Eliz. 895, *Yelverton*, J., held, that an action of debt lies for an annuity for years during its continuance; and he took this difference, that where a rent for years is granted originally, and where a rent or annuity is granted in fee, and out of it a grant is made for years, there no action of debt lies during the years. And of that opinion was *Fenner*, J., as to the last point, but he doubted of the first; wherefore *cæteris justiciariis absentibus, adjournatur*. However, in *Tomfield's* case, Cro. Eliz. 3, (7); it was agreed by *all* the Justices in the Common Pleas, that the grantee of an annuity for years cannot have an action of debt for the arrears, during the term in the annuity. In *Lucas* v. *Fulwood*, 1 Buls. 15, in an action of debt for an annuity for years, *Yelverton*, J., upon the first moving, conceived the action of debt to be well brought, and he said, " so if lessee for years grants an annuity to another for years, an action of debt well lieth for it." But *Williams*, J., said, " the plaintiff here is not to have an action of debt, if the term do continue, but if the term be determined, an action of debt then lies by him." And so is the 9 H. 7, fol. 16, 17, where it is held, that if an annuity be granted to one for years, as long as the term continues, a writ of annuity lies for the same; but when the lease is determined, an action of debt lies for the same, and so is the old book of entries, fol. 151, in debt for an annuity; but here the plaintiff has failed in his action, for he has brought his action of debt, and declares for an annuity; this is not good; but the declaration is defective herein in matter of substance; and this clearly is not aided by any statute: and of this opinion was *Yelverton* afterwards; and therefore judgment was given for the defendant. *Brooke* says, that as long as the annuity continues, a writ of annuity lies, and not a writ of debt, although the annuity should be only for years. Bro. Abr. *Annuitie*, pl. 29. And yet he observes, pl. 46, the executors shall have a writ of debt of the arrears of an annuity incurred in the life-time of the testator: and so far an action of debt lies for an annuity whilst it continues; and it shall be in the *detinet*, where the writ of annuity is in the *debet*. But where a man devised an annuity, charged on his real estate, to *his sister and heir at law, a feme covert, and a portion for her daughter, and by codicil said, on condition that they release all right, &c., it was held, that debt cannot be maintained for the arrears of the annuity incurred during the coverture, the sister being dead, and not having released. *Acherly* v. *Vernon*, Fortescue, 188.

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Debt does not lie at the common law, nor by stat. 8 Ann. c. 14, for the arrears of an annuity or yearly rent devised, payable out of lands to A. during the life of B. to

On this point, the case of *Webb* v. *Jiggs* and *Martha* his wife, 4 Maule & Selw. 113, is too important, and has too much law, both in the argument and in the judgment of the Court, to be passed over by merely stating the point determined: there, in an action of debt, the plaintiff declared that one *J. Webb* was seised in fee of certain lands at Iver, in Buckinghamshire, and, being so seised, by his will duly executed according to the statute, gave and bequeathed to the plaintiff an annuity or yearly rent of 10*l.* to be issuing and payable yearly and every year during the life of the

defendant *Martha*, out of the said lands; and also gave and bequeathed the said lands to the said *Martha* and her assigns for her life, she paying thereout, in manner aforesaid, to the plaintiff the said annuity or yearly rent; and afterwards the said *J. Webb* died, and his will was duly proved, whereupon the said *Martha* became seised as of freehold for her life of the said lands, and the plaintiff became entitled to the said annuity or yearly rent; and afterwards the said *Martha* married the other defendant *Jiggs*, whereby they became seised of the lands as of freehold in right of the said *Martha* for her life; and so the plaintiff avers, that while they were so seised, and were the pernors of the profits thereof, 75*l.* of the said annuity or yearly rent, for seven years and a half, ending on the 25th of March, 1814, became due from the defendants as the pernors, and still is in arrear and unpaid, whereby *actio accrevit*, &c.

whom the lands are devised for life, B. paying the same thereout, so long as the estate of freehold continues.

Demurrer. Joinder.

Richardson, in support of the demurrer, made three points: 1st, that debt does not lie in this case at the common law. And he took this distinction, that if an annuity be granted *for years*, debt lies for the arrears, [*sed vide ante*, p. 597,] so if for life, or *pur autre vie*, *after the estate determined*, debt lies. But by the common law debt does not lie for the arrears of a rent or annuity in fee, fee tail, or for life, *so long as the estate of freehold has continuance*. And for this he cited *Ognel's* case, 4 Rep. 48 b. Com. Dig. *Debt*, (A 6, 7); Ibid. (B), also 1 Rol. Abr. 594 (G), pl. 1, to the same effect. And the reason given is, because the law will not suffer a real injury to be remedied by an action merely personal. 3 Bl. Com. 232. Whether this reason be satisfactory or not, it is enough that the rule of law is so; and the party is not without his remedy, for an assize of *mort d'ancestor*, Fitzh. N. B. 195, or novel *disseisin, Co. Litt. 178, will lie, or the writ *de consuetudinibus et servitiis*, [*599] or the writ of *cessavit*. Co. Litt. 208. In many cases, indeed, according to Litt. sec. 219, "the grantee of a rent charge may choose whether he will sue a writ of annuity against the grantor, or distrain for the rent behind;" and Lord Coke says upon that, Co. Litt. 144 b, "the grantee hath election to bring a writ of annuity and charging the person only, to make it personal, or to distrain upon the land and to make it real." But that is to be understood of a rent granted by deed, which charges the person, and for which a writ of annuity doth lie; but not as in the case at bar, where there is not any charge upon the person. 2dly, If debt does not lie at the common law, neither does it by stat. 8 Anne, c. 14, s. 4. For that statute applies only to cases between landlord and tenant, for rent arrear upon a *lease* or *demise* for life or lives, which this is not. Admitting that a lease may be created by will, 2 Leon. 33, *Machel* and *Dunton's* case, as if the land were devised to one for life, reserving a rent, and the reversion to another, such a devise might operate as a lease, and give the reversioner the remedy of this statute; yet here is neither lease or demise,

nor lessor or grantor, neither is there any privity between the parties. 3dly, This action, supposing it maintainable at all, doth not lie against husband and wife, but against the husband only; which is plain from this consideration, that during the husband's life he has the whole pernancy of the profits, and for the rent arrear during his life, his executors, and not the wife shall be chargeable, though the land itself is chargeable. Thus in *Ognel's* case, 4 Rep. 49 b, one was grantee for life of a rent out of the moiety of a manor, of which moiety a man was seised *jure uxoris*. The rent was in arrear, and grantee died, and his executors brought debt against the husband only for the arrearages. And it was resolved, that by the death of the grantee, the grant for life was turned into the nature of a debt; and forasmuch as the husband took the profits of the land charged with the rent when in arrear, he only without his wife shall be charged in an action of debt; and after his death, debt lies against his executors. So, Com. Dig. *Baron* and *Feme* (Y), "Debt lies against husband alone for rent incurred during the coverture, upon a lease to the wife *dum sola*," and cites Thoms. Entr. 117.

Gifford, contrà, admitted the rule of the common law to be against the bringing an action of debt, so long as the freehold continues; but that, he said, was only where the freehold is conveyed at the common law, and not where it is by devise, which is by the statute of wills; for to such conveyances none of the writs of assize or other real writs apply. Therefore the plaintiff in this case will be without remedy, if he *may not maintain this action. And if it were necessary, in order to maintain it, that there should be a charge on the person, here the defendant is charged with the payment of the rent, for the land is devised to her, *she paying thereout to the plaintiff the said rent*, which charges the person as well as the land. And what Lord *Holt* said in *Ewer* v. *Jones*, 2 Ld. Ray. 937; 2 Salk. 415; 6 Mod. 27; is decisive in favour of this action, and he said that he made no question of it. 2dly, This action is maintainable by the statute of Anne, for it is within the mischief, and therefore within the intent of the statute, though the words thereof be only *lease* or *demise*. And oftentimes the Courts have extended the provisions of a statute to cases which were not within the letter, if they were within the mischief. Plowd. 467. For instance, the statute 9 Ed. 3, c. 3, which gives an action against executors, is extended by equity to administrators, because they are in the same degree. So the statute of Glocester gives an action of waste against tenant for life or *years;* yet by the equity thereof it lies against him who holds but for a year, or for twenty weeks; for though this be out of the words of the act, it is within the intent. Plowd. 467. And by parity of reason, the Court ought to extend the remedy of this statute to the present case, it being plainly the intention of the statute to give an action of debt for rent arrear, during the continuance of any estate for life or lives; and therefore though the letter says upon a *lease* or *demise*, yet, by the equity, it

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shall be intended *by will* also. 3dly, Although the husband might have been sued alone, yet may the wife be joined: in like manner as for rent upon a lease for years or life, made to husband and wife, an action lies against both, because it is for the wife's benefit. 1 Rol. Ab. 348, (X). So here the freehold is in the wife jointly with her husband, and it is for her benefit, and after the husband's death she could not waive it.

Richardson in reply said, there was no reason why the common law writs should not lie for the recovery of the rent in this case, as well as upon a conveyance at the common law, so far at least as they were applicable to a taking by purchase and not by inheritance: as novel disseisin, where the writ shall be general, *that unjustly, &c. he hath disseised him of his freehold, &c.* For when a statute, as the statute of wills, gives a new right, it gives all such remedies for the recovery of that right, as by law may be applied to it. And a rent, whether created by will or grant, will pass by a common recovery, &c., which shews that it may be the subject of a real action. And notwithstanding what fell from Lord *Holt*, in *Ewer* v. *Jones*, there is no instance of an action lying for a legacy chargeable on land. *Deeks* v. *Strutt*, 5 T. R. 690, shews that it will not lie for a legacy generally; and the reason there *assigned holds equally where the legacy is charged on [*601] land. Besides, this is not a legacy but a rent. And as to this action being within the equity of the statute of Anne, such a construction of an act of parliament might well obtain formerly, when the legislature was used to express its intention sparingly, in a few words or sentences only; but in modern times, since it has become the practice to express such intention fully and at large, so that it may be found within the four corners of the act of parliament, it is unnecessary, and would be highly dangerous to extend it by any intendment; and therefore that doctrine is properly exploded. Upon the last point, he admitted, that, according to the authorities, it rather seemed that the action would lie both ways.—*Cur. adv. vult.*

Lord *Ellenborough*, C. J., on this day delivered the judgment of the Court. After stating the pleadings, his Lordship said, This demurrer was argued at our sittings before Hilary Term in Serjeant's Inn Hall, when it was contended on the part of the defendants, in support of the demurrer, that, at the common law, an action of debt will not lie for a rent or annuity in fee, in tail, or for life, while it continues a freehold interest. And this position was not denied on the other side, but it was contended that it applied only to legal common law estates, and not to devises by will. And what appears to have been said by *Holt*, C. J. in *Ewer* v. *Jones*, reported in 2 Ld. Ray. 937; Salk. 415; and 6 Mod. 26, 27, was relied on, viz. "That a devisee may maintain an action at common law against the terre-tenant for a legacy devised, payable out of land; for where a statute, as the statute of wills, 32 & 34 H. 8, gives a man a right, he shall have an action to recover it of consequence; because his right is created by act of parliament." But what Lord *Holt* is there stated to have said, does not reach this objection; it is said only generally of a legacy or sum of money, not of

an annuity or rent for life, in tail, or in fee; and it is to be observed, that in the case of a legacy payable out of land, unless the legatee had his remedy by action of debt, founded on the statute, he would be wholly without remedy in the courts of common law; whereas the annuitant would not be remediless, but would have an assise to recover his annuity. See *Brediman*'s case, 6 Rep. 56 b. And no authority has been stated where the general rule of law, which excludes the action of debt as a remedy for rent or annuity in fee, in tail, or for life, has been confined to annuities or rents created by common law conveyances, as contradistinguished from annuity or rents created by devise; nor does there seem any reason for making the distinction. It was next contended on behalf of the plaintiff, that this
[*602] case was within the provisions of the 4th section of stat. *8 Ann. c. 14, "for the better security of rents, and to prevent frauds by tenants;" but the language both of the title of the act, and of the enacting clause, shews that the legislature contemplated only the case of rent due from a tenant, holding by lease or demise under his landlord, which is not this case, this being the case of two distinct and independent devises of the land to one person for life, and to another of an annuity issuing out of the same, for the life of the devisee of the land, created by the will of one and the same devisor, and without any such original privity between the devisee of the land charged with the annuity, and the devisee of the annuity charged thereupon, as subsists between a lessor and his lessee. We are therefore of opinion, that the action of debt is not maintainable on the ground of this stat. of Ann. c. 14, any more than it is upon the other ground already considered. [So in the late case of *Kelly* v. *Clubbe*, 6 J. B. Moore, 335, where, in an action of debt for the arrears of an annuity, the declaration stated that by a certain indenture the defendant granted to the plaintiff during her life an annuity or rent charge of 200*l.*, to be yearly issuing out of certain premises in the indenture mentioned, to hold the same unto her and her assigns during her life, without any deduction in respect of taxes: It was objected, that the principle of *Webb* v. *Jiggs* was not applicable, inasmuch as it did not appear on the face of the declaration that the grantor had a freehold interest in the lands, which he might have held for a long term of years; but the Court thought that the cases were undistinguishable; for that it was to be presumed, unless the contrary was stated, that the annuity for life was granted out of a freehold estate, and not out of a term of years, and therefore that the action did not lie.]

A writ of annuity does not lie after the determination of an annuity. But an action of debt lies.

It is an invariable rule, that the writ of annuity only lies whilst the annuity continues payable; so that if the annuity be extinguished by act of the party, or by operation of law, before the writ is purchased, or pending the writ, there the writ of annuity is gone. Bro. Abr. *Annuitie*, pl. 32; Bro. Abr. *Dette*, pl. 145; 2 Vin. Abr. 516, pl. 8.

Seisin of a rent.

It was not sufficient at the common law to support a distress for rent, that such rent was properly reserved or granted, but it was also necessary

that the party distraining should have a seisin of the rent, without which there was no privity between him and the tenant; and therefore, before the statute 4 Anne, c. 16, had rendered attornment in future unnecessary, it was requisite, upon the grant of a rent charge or rent service by a common law conveyance, that the tenant should attorn to the grantee, in order to give him a seisin in law of the rent, without which the grantee could not distrain. Co. Lit. 309. 311. And even this seisin in law was not sufficient to support an assize, or other real action for the rent, for which actual seisin, by receipt of a part of the rent, was required. Litt. s. 235. This latter seisin was not however necessary for a distress; because, except in a very few cases (such as a seisin of encroachment tortiously gained by coercion of distress), the tenant was not permitted to dispute the actual seisin of his lord in a replevin. *Bevil's* case, 4 Co. 9 a, 11 b. But the doctrine of seisin, with relation to a distress for rent, has become nearly obsolete since the statute 4 Anne, c. 16, s. 9, by which it is enacted, "That from and after the first day of Trinity Term, one thousand seven hundred and six, all grants or conveyances thereafter to be made by fine or otherwise of any manors or rents, or of the reversion or remainder of any *messuages or lands, shall be good and effectual to all intents and purposes, without any attornment of the tenants of any such manors, or of the land out of which such rent shall be issuing, or of the particular tenants upon whose particular estates any such reversions or remainders shall and may be expectant or depending, as if their attornment had been had and made." And, by sec. 10, it is "Provided nevertheless, that no such tenant shall be prejudiced or damaged by payment of any rent to any such grantor or conusor, or by breach of any condition for non-payment of rent, before notice shall be given to him of such grant." There are however some cases in which the seisin of a rent may still come in question: as in a distress for an ancient rent charge, created before that act by a conveyance taking effect by the principles of the common law, and not by the statute of uses. For the statute 32 Hen. 8, c. 2, s. 4, enacts, "That no person nor persons shall hereafter make any avowry or cognizance for any rent, suit, or service, and allege any *seisin* of any rent, suit, or service, in the same avowry or cognizance in the possession of his or their ancestors or predecessor or predecessors, or in his own possession, or in the possession of any other whose estate he shall pretend or claim to have, above *fifty* years next before the making of the said avowry or cognizance." Now, a rent charge, if created before the first day of Trinity Term, 1706, is not within the statute 4 Anne, c. 16; *Long* v. *Buckeridge*, 1 Stra. 106; nor is any *rent charge* within the statute 11 Geo. 2, c. 19, entitling the distrainor to avow generally for rents, without alleging a seisin thereof. *Lindon* v. *Collins*, Willes, 429; *Bulpit* v. *Clarke*, 1 New Rep. 56. And therefore, such ancient rent charge still continues under the operation of the act, 32 Hen. 8, c. 2. But, as it has been de-

By 4 Anne, c. 16, grants and conveyances are good without attornment of tenants;

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but not prejudice tenants before notice of grants.

The seisin of a rent charge granted by a common law conveyance before the 4 Anne, c. 16, may still come in question.

termined, that this statute does not require an actual seisin by receipt of the rent, but only a seisin in law; *Bevil's* case, 4 Co. 10 b; and see *Fawkner* v. *Bellingham*, Hetley, 36; *Foster's* case, 8 Co. 64; it would, perhaps, be satisfied by shewing any act or assent on the part of the tenant, which would have amounted to an implied attornment at the common law. *Anonymous*, 3 Leon. 17; *Bevil's* case, 4 Co. 12; Bradby on Distresses, 32.

By 27 Hen. 8, c. 10, use in a rent executed into legal estate, for which a distress may be made without attornment, independently of 4 Anne, c. 16, although no power of distress, &c. be given by the deed.

However, even before the 4 Anne, c. 16, if a rent were originally granted by way of use, under the 27 Hen. 8, attornment was unnecessary: for, by the statute of uses, 27 Hen. 8, c. 10, s. 4, after reciting "And where also divers persons stand and be seised of and in any lands, tenements, or hereditaments, in fee-simple or otherwise, to the use and intent that some other person or persons shall have and perceive yearly to them, and to his or their *heirs*, one annual rent of x. li, or more or *less, out of the same lands and tenements, and some other person one other annual rent, to him and his assigns for term of life or years, or for some other special time, according to such intent and use as hath been heretofore declared, limited, and made thereof." By the *fifth* section it is [*604] enacted, "That in every such case the same persons, their heirs, and assigns, that have such use and interest, to have and perceive any such annual rents out of any lands, tenements, or hereditaments, that they and every of them, their heirs and assigns, be adjudged and deemed to be in possession and seisin of the same rent, of and in such like estate as they had in the title, interest, or use of the said rent or profit, and as if a sufficient grant, or other lawful conveyance had been made and executed to them, by such as were or shall be seised to the use or intent of any such rent to be had, made, or paid, according to the very trust and intent thereof; and that all and every such person and persons as have, or hereafter shall have, any title, use, and interest in or to any such rent or profit, shall lawfully distrain for non-payment of the said rent, and in their own names make avowries, or by their bailiffs or servants make conisances and justifications, and have all other suits, entries, and remedies for such rents, as if the same rents had been actually and really granted to them, with sufficient clauses of distress, re-entry, or otherwise, according to such conditions, pains, or other things limited and appointed, upon the trust and intent for payment or surety of such rent." See *Cromwell's* case, 2 Co. 72 b; Gilb. Uses, 200.

Cestui que use of a fine of a rent, &c. of which there had been attornment, may distrain without another attornment, independently of 4 Anne, c. 16.

So, under the statute of uses generally, it was resolved in Sir *Moyl Finch's* case, 6 Co. 68 a; Co. Litt. 309 b; that if, after attornment, a fine be levied of a reversion of lands, or of a rent to a man and his heirs, to the use of another and his heirs, as by the statute of uses, the use and possession come instantly together; and there being consequently no intervening time for the conusee of the fine to bring either a *quid juris clamat*, or a *quem redditum reddit*, for or to receive an attornment to

perfect his possession, the *cestui que use* and his heirs should, notwithstanding, distrain, and have the same advantage as if the conusee's possession had been perfected by attornment and seisin. This construction of the statute was a great strain and violence upon the true reason of law, because it establishes, that a conveyance, which in reason could not be good without attornment, should be sufficient; because it could not have an attornment, which was necessary to make it sufficient. Vaugh. 51. And so, as Lord Coke says, for the same cause, if a man, perfectly seised of a seigniory, rent, reversion, or remainder, bargain and sell the same by deed, indented and enrolled according to the statute, *the bargainee may distrain without attornment, by virtue of the statute. But Lord Coke admits, that if the conusee of a fine, before any attornment had been made, by deed indented and enrolled, bargained and sold a seigniory, &c. to another, the bargainee should not distrain, because the bargainor could not distrain for want of attornment. *Et sic de similibus;* for *nemo potest plus juris ad alium transferre quam ipse habet.* Co. Litt. 309 b. So, if before the statute of Anne the use of a fine of a fee farm rent derived from the crown before the 22 Car. 2, c. 6, were declared to the conusee himself, as he would be in by the common law, although the rent would pass by the fine, yet it did not enable him to distrain without attornment. *Long* v. *Buckeridge*, 1 Str. 106, 111.

Bargainee of a rent, &c. of which the bargainor is properly seised, may distrain without attornment, independently of 4 Anne, c. 16,

But it is otherwise if no attornment has been made, or the use of the fine be declared to the conusee himself.

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The executors of tenant for life of a rent charge, and of tenant *pur autre vie*, after the death of *cestui que vie*, might bring *debt* to recover the arrears of such rents by the *common law*. And although the contrary might, at first view, be inferred from the generality of the preamble of the statute 32 Hen. 8, c. 37, yet these words have in construction been restricted to mean, tenants *pur autre vie*, so long as *cestui que vie* lives; Co. Litt. 162 a, b; *Ognel's* case, 4 Co. 49 b; Wms. n. 2 Saund. 282 (1); Hargr. n. Co. Litt. 162 a (4), 162 b (1); *Hoole* v. *Bell*, 1 Ld. Raym. 172. But they could not have distrained, which now they may do by force of that statute, which is as follows:

Executors of tenant for life and *pur autre vie*, of a rent charge, may have *debt*, or may distrain for arrears incurred in his lifetime.

" *For Recovery of Arrearages of Rents by Executors of Tenant in Fee Simple* [&c.] 32 Hen. 8, c. 37.

" Forasmuch as by the order of the common law, the executors or administrators of tenants in fee simple, tenants in fee tail, and tenants for term of lives, of rent services, rent charges, rent secks, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms as were due unto their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain, or have any lawful action to levy any such arrearages of rents or fee farms due unto him in his life as is aforesaid; by reason whereof the tenants of the demesn of such lands, tenements, or hereditaments, out of the which such rents were due and payable, who of right ought to pay their rents and farms at such days and terms as they were due, do

Vaughan, 39; 2 Roll. 370, 382, 457: Dyer, 375, pl. 20.

many times keep, hold, and retain such arrearages in their own hands, so that the executors and administrators of the persons to whom such rents or fee farms were due, cannot have or come by the said arrearages of the same, towards the payment of the debts and performance of the will of the said testators: For remedy whereof, be it enacted by the authority of this present parliament, That the executors and administrators of every such person or persons, unto *whom any such rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages, against the tenant or tenants that ought to have paid the said rent or fee farms so being behind in the life of their testator, or against the executors and administrators of the said tenants; and also, furthermore, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee farms, upon the lands, tenements, and other hereditaments, which were charged with the payment of such rents or fee farms, and chargeable to the distress of the said testator, so long as the said lands, tenements, or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demesn, who ought immediately to have paid the said rent or fee farm, so being behind, to the said testator in his life, or in the seisin or possession of any other person or persons claiming the said lands, tenements, and hereditaments, only by and from the same tenant by purchase, gift, or descent, in like manner and form as their said testator might or ought to have done in his life-time, and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

Vin. V. 18, 542.

Executors or administrators of tenants in fee simple, fee tail, and for life, of rent services†, rent charges, rent secks, and fee farms, may have an action of debt, or may distrain for arrears due in the testator's life-time.

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1 Leon. 302; Cro. El. 805; Cro. Car. 471; 2 Vern. ca. 550.

Redemption money paid in Wales and the Marches.

2 Leon. 33; Vaugh. 415.

"II. Provided alway, that this act, nor any thing therein contained, shall not extend to any such manor, lordship, or dominion in Wales, or in the Marches of the same, whereof the inhabitants have used, time out of the mind of man, to pay unto every lord, or owner of such lordship, manor, or dominion, at his or their first entry into the same, any sum or sums of money, for the redemption and discharge of all duties, forfeitures, and penalties, wherewith the said inhabitants were chargeable to any of their said lords, ancestors, or predecessors, before his said entry.

The husband's remedy for rent due in the right, and in the life of his wife.

"III. And further be it enacted by the authority aforesaid, That if any man which now hath, or hereafter shall have, in the right of his wife, any estate in fee simple, fee tail, or for term of life, of or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due,

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Definition of a rent service.

† *i. e.* payable to the lord of the seigniory, or to a person having an immediate or remote reversion in the lands. Com. Dig. *Rent*, (C. 1).

behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors, and administrators, shall have an action of debt for the said arrearages against the tenant of the demesn that ought to have paid the same, his executors or administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and *form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

Co. pl. f. 119. Vaugh. 38.

4 Co. 51. Co. Lit. 351 b. Goldsb. 30, pl. 1.

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" IV. And likewise it is further enacted by the authority aforesaid, That if any person or persons which now have, or hereafter shall have any rents or fee farms for term of life or lives, of any other person or persons, and the said rent or fee farm now be, or hereafter shall be due, behind, and unpaid in the life of such person or persons for whose life or lives the estate of the said rent or fee farm did depend or continue, and after the said person or persons do die; then he unto whom the said rent or fee farm was due in form aforesaid, his executors or administrators shall and may have an action of debt against the tenant in demesn, that ought to have paid the same when it was first due, his executors and administrators, and also distrain for the same arrearages upon such lands and tenements out of the which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee farms was determined and expired, had been in full life and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid."

The remedy for a rent, the estate whereof dependeth upon another's life being dead.

1 Anders. 47. 3 Leon. 59. 5 Co. 118. 7 Co. 39. 2 Leon. 153. Moor, 625, pl. 858. Co. Lit. 162 a.

By the common law, the heirs, executors, or administrators of a man seised of a rent service, rent charge, rent seck, or fee farm, in fee simple, or fee tail, had no remedy for the arrears incurred in the life of the owner of such rents. But now, by the above statute, a double remedy is given to the executors or administrators, either to distrain or to have an action of debt. Co. Litt. 162 a. And it seems that an executor of an executor is within the equity of the act. Off. Ex. 258. So, at common law, if a *feme sole*, seised of a rent in fee, &c., which was behind and unpaid, married, and the rent became behind again, and the wife died; the husband, by the common law, could not have the arrears grown due before the marriage; but, for the arrears become due during the coverture, the husband might have an action of debt by the common law. But now this statute gives the husband the arrears due before marriage, and a double remedy for the same, that he may distrain for the arrears grown due during the coverture. So it gives him that which he could not have before, and further remedy for that which the common law gave him; and so it has been adjudged. *Ognel's* case, 4 Co. 51 a; *Sharp* v. *Pool*, N. Bendl. 263, pl. 273; Co. Litt. 162 b.

Remedy for executors or administrators at common law, for arrears incurred in testator's life-time.

For husband for arrears in right of his wife.

Tenant for life of a rent charge confessed a judgment, which was ex- Conusee of te-

nant for life of a rent charge, not within the statute.

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tended by *elegit;* tenant for life died, conusee distrained, and in replevin avowed for the arrears incurred in the life of tenant for life; *and upon demurrer the distress was held to be bad, and not warranted by the statute. 1. Because the case of the conusee is not enumerated in it. 2. Because he comes in the *post*, and not under the tenant for life. Bull. N. P. 57. But he might have debt. *Pool* v. *Neel*, Sid. 28, 29; 18 Vin. Abr. 545.

Executor of grantee for years not within the statute.

But the executor of a grantee of a rent charge for years, determinable on a life or lives, is not within this statute. *Pool* v. *Duncomb*, Bull. N. P. 57. Nor does the act extend to a quit rent issuing out of copyholds. *Appleton* v. *Doiley*, Yelv. 135; *Sed vide* Carth. 91; where, by *Eyre*, J. this point is doubted. 2 Bac. Abr. 282, *margine. Debt* (C). Lord Coke says, if a man make a lease for life, or a gift in tail, reserving a rent, this is a rent service within the statute; Co. Litt. 162 b; from whence it may be inferred, that he thought that a rent reserved upon a lease for years was not within it: and I apprehend, says Mr. Justice Buller, N. P. 57, that it is not, for the landlord is not tenant in fee, fee tail, or for life, of such a rent; and it is the executors of such tenants only who are mentioned in the act. However, in trespass, where it appeared the defendant had distrained the plaintiff's goods for rent due to his testator upon a lease for years, Lord Chief Justice *Lee* held it to be within the statute, and the defendant obtained a verdict. *Powel* v. *Killick*, at Westminster, M. 25 Geo. II.

Distress the best remedy,

The distress is a more plain and certain remedy than the action of debt; for the action of debt must be brought against the persons who took the profits when the rent became behind, or against their executors or administrators; but the distress may be taken upon the land, be it either in the tenant's own hands, or in the hands of any other who claims by or from

because it may be made on those claiming under the grantor.

him, (that is, by interpretation, under him), by purchase, gift, or descent. And these words, *claiming only by and from him,* are to be understood claiming only from or under him by purchase, gift, or descent, and not paramount or above him; as the lord by escheat claims not under the tenant by purchase, gift, or descent, but by reason of his seigniory, which is a title paramount. Co. Litt. 162 b. For other cases not within the statute on a like ground, see Cro. Eliz. 332; 1 Leon. 302; 2 Vern. 612. See also on the extent of this branch of the statute, *Edridge's* case, 5 Co. 118.

A power of distress follows the land in the hands of any common person claiming under the grantor of the rent charge.

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Therefore, wherever a rent charge can be distrained for, the remedy follows the land in the hands of any succeeding tenants claiming under or through the person who granted the rent charge; or if the tenant be dead, the goods of the deceased may be distrained in the hands of his executor or administrator for the rent accrued before and after his death. Bradby, 112. *Braithwaite* v. *Cooksey*, 1 H. Bla. 465. Thus, in replevin, the defendant avowed for a rent charge due in the year 1660, and afterwards he distrained, and avowed for other part of the rent charge due a year before, viz. *anno* 1659;

and this distress was taken of the cattle of another person, who was then tenant of the lands: and upon demurrer, the question was, whether he was estopped to avow for the arrears of the rent charge before the year 1660? And it was adjudged that he was not; but that if he had given an acquittance to the last day of payment, he could not claim the rent due before, because that was his voluntary act and deed, and he shall be estopped to claim against it; but in an avowry for rent, he may avow for all or part, at his pleasure; and the first avowry shall not bar him from avowing for rent before. *Palmer* v. *Stabick*, Sid. 44, pl. 1; 9 Vin. Abr. 157, pl. 24. So in another state of this case, in covenant against an executor for the arrears of a rent charge due long before; *Powel*, Justice, said, an avowry for the arrears of a rent charge in 1679 is no estoppel to bring covenant for the arrears in 1678. And he said, there is a diversity, where the acquittance for the last rent is under the plaintiff's hand and seal, and where it is under his hand only; for in the first case it is an estoppel, in the latter it is only evidence; *Fountain* v. *Gnales*, Comb. 59; but it is strong presumptive evidence that the former rents have been regularly paid. Phillips on Evidence, 155, 5th ed.; Gilb. on Debt, page 434, ed. 1760. B. 3, c. 2; 1 Selw. N.P. 598, 5th ed. So, if a man give a receipt in full of all demands, it is presumptive evidence that there were no debts standing out; and the other party will be allowed to prove the contrary: but how he is to prove a negative, viz. that the former rent has not been paid, is not stated. However, if the receipt in full of all demands be under hand and seal, the presumption is so strong, that the law admits of no proof to the contrary. Gilbert on Evidence, 158, 4th ed. 142, Sedgw. ed. And in *Palmer* v. *Stanage*, 1 Lev. 44, apparently the same case as *Fountain* v. *Gnales*, *Foster*, Chief Justice, said, that the avowry for rent due at a latter day, cannot be a discharge of rent due at a former day, any more than a recovery in an action of debt for rent due at a latter day, can be a bar in an action of debt, for rent due at a former day. [In the late case of *Cupit* v. *Jackson*, M'Clel. 495, it was held that a rent charge could not be discharged by parol, either as to the arrears or the accruing payments.]

A rent charge may be distrained and avowed for, although there has been a previous distress and avowry for rent becoming subsequently due;

or an action of covenant may be brought;

but an acquittance under hand and seal is an estoppel.

A recovery in an action of debt for rent due at a latter day, is no bar in an action of debt for rent due at a former day.

So if a man grant a rent charge to A., for the life of B., and let the lands to C. for life, the remainder to D. in fee; the rent is behind for many years; B. dies, and afterwards C. dies; A. may distrain D. in remainder for all the arrears, by the latter branch of the statute 32 Hen. VIII. And this diversity arises from the difference between the former branch and this latter; and which was so expounded and adjudged in **Edridge's* case, 5 Co. 118; the latter clause giving the lesser estate the greater remedy.

Remainder man claiming under grantor of a rent charge, subsequent to the grant, liable to a distress.

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So if a tenant for life grant a rent charge, and afterwards surrender his estate to the lessor; although the estate charged be merged, and the lessor is not in by him, yet he shall hold it charged. Co. Litt. 185 a, 338 b, 233 b; Preston on Merger, 447, 456, 471.

Surrenderor liable to a distress for rent charge granted by surrenderee.

So if a rent be granted out of two parts of certain land, and afterwards

Lessee of the

whole lands under several lessors, liable to a rent charge granted by one of them.

a lease be made of the two parts to A.; and the other part also comes to A., by another lease from him who has the third part, the cattle of the lessee may be taken for this rent. 1 Roll. Abr. 670, pl. 34; *Newman* v. *Moore*, Hob. 80, 4th ed. So where a stranger claims under the grantor, after the grant of a rent charge, his cattle are liable to a distress: as the cattle of a lessee, where the demise was after the grant. Com. Dig. *Distress*, (B. 2).

Either of several tenants of lands subject to a rent charge may be distrained; or any part of the lands, if they lie in several counties.

So if a rent charge issue out of land, which is in the hands of several men, a distress may be taken for the whole rent upon the possession of one; for all the rent issues out of every part. 1 Roll. Abr. 671, pl. 12. So if a rent service or a rent charge issue out of land lying in several counties, a distress for the whole may be taken in one county. 1 Roll. Abr. 671, pl. 10 and 11.

What goods of a stranger are exempted from a distress.

To exempt the goods even of a stranger from a distress for rent, it is necessary that they should be on the premises demised under peculiar circumstances: as for the purpose of trade, in which case, on account of the public advantage of trade, they are privileged from distress; or the place in which they are found should be itself privileged for the like reason of general benefit; as a market, fair, or public inn. Bradby, 115, 208; 3 Bla. Com. 8; Gilb. Distresses, 39, 3d ed.; *Gorton* v. *Falkner*, 4 Term Rep. 565.

Goods in the possession of the law, privileged from a distress.

It is a rule, that neither the goods of the tenant or a stranger can be distrained for rent, if they are already in the custody of the law; as if taken damage feasant, or under an execution, unless such execution be already satisfied: *Harwell* v. *Barwell*, Sir W. Jones, 456: because, in these cases, an interest in the goods is vested in third persons by the act of law, which cannot be divested, unless by their own default. Bradby, 115. But if goods remain on the demised premises after a fictitious bill of sale made of them under an execution, they are liable to be distrained as before. *Smith* v. *Russel*, 3 Taunt. 400. And under 8 Anne, c. 14, the landlord is entitled to rent to the extent of one year, although there be an execution, excepting as against the crown.

Distinctions as to distraining a stranger's cattle which escape: 1st, By a landlord for rent;

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A settled distinction seems now to be, that where a stranger's cattle escape into another's land, by breaking the fences where there is no *defect in them, or if the tenant of the land where the distress is taken is not bound to repair the fences, though there is a defect in them, the cattle may be distrained for rent, immediately before they are *levant* and *couchant*. Yet if the landlord chase the cattle upon the land liable to his distress, then levancy and couchancy is material. *Kemp* v. *Crews*, 1 Ld. Raym. 170. But if the cattle escape through the defect of fences which the tenant of the land is bound to repair, they cannot be distrained by the landlord for rent reserved upon a lease for years, though they have been *levant* and *couchant*, unless the owner of the cattle, after notice that they are in the land, neglect or refuse to drive them away. For if the lessor

had retained the land in his own hands, he ought to have repaired the fences; and when he puts in a lessee, he ought, by covenant, &c. to oblige him to repair; and therefore, in that case, if the law should allow the lessor to distrain the cattle of a stranger which come in by escape, before they are *levant* and *couchant*, it would be in effect to allow a man to take advantage of his own wrong; therefore the opinion, Co. Litt. 47 b, that "beasts that escape may be distrained for rent, though they have not been *levant* and *couchant*," cannot be maintained so generally, no books warranting it, excepting 7 Hen. 7, 1 and 2; and 10 Hen. 7, 21 b; *Kemp* v. *Crews*, 1 Ld Raym. 168; *Kimp* v. *Cruwes*, 2 Lutw. 1578. But it seems, the lord of the fee for an ancient rent may distrain cattle which come in by escape, although they have not been *levant* and *couchant*. 1 Ld. Raym. 167, Argu.; 9 Vin. Abr. 144, n.; 1 Roll. Abr. 668, pl. 2 and 3. However, it seems to be admitted, that the lord may distrain them after they have been *levant* and *couchant*, without giving notice to the owner of the cattle; Doctor and Student, Dial. I. ch. 7, p. 24, 18th ed. Wms. n. 2 Saund. 290, (7); Hargr. n. Co. Litt. 47 b, (3); Bradby, 115; although it be in default of the fences, which the tenant of the land ought to maintain, because the lord of the seigniory has nothing to do with the repairing of the fences; but the owner may prevent the distress, by pursuing and retaking the cattle before the distress be made. 1 Ld. Raym. 168, Argu.; Gilb. Distresses, 46, 3d ed. It is said, that the grantee of a rent charge may distrain the cattle of a stranger, after they have been *levant* and *couchant*; 2 Leon. 7, 8; *i. e.* the stranger's cattle must be so long resident on the lands out of which the rent charge issues, that notice may be presumed to the owner of them; that is, they must be *lying down* and *rising up* on the premises, *for a night and a day*, without pursuit being made by the owner of them; Gilb. Distresses, 47, Hunt's ed.; and, it is said, although no notice be given to the owner; because the grantee having nothing to do with the fences, there is no default in him as there is in a landlord, and that therefore such notice is not necessary. *Kimp* v. *Cruwes*, 2 Lutw. 1580; Wms. n. 2 Saund. 290, (7); Hargr. n. Co. Litt. 47 b, (3). But it is rather singular, that the grantee of a rent charge should be in a better situation as to taking a distress, than the person who granted him the power of distress.

2d, By the lord of an ancient seigniory, for services;

3d, By a grantee of a rent charge. Definition of levancy and couchancy.

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In a case where a rent charge had been in arrear for twenty years, and cattle, escaping out of the adjcining grounds, had been distrained for the arrears, the distress was relieved against in equity. *Broden* v. *Pierce*, 2 Vern. 131. It has been held, that cattle going to London, and put into a close, with the consent of the landlord and leave of the tenant, to graze for a night, might be distrained by the landlord for rent. *Fowkes* v. *Joice*, 3 Lev. 260; 2 Vent. 50; 2 Lutw. 1161, English ed. 472. But the owner of the cattle was afterwards relieved in equity, on the ground of fraud in the landlord, who had consented to the cattle being put into the close,

Equity will sometimes grant relief in favour of a stranger, when his cattle are distrained.

and afterwards distrained them for rent; and he was decreed to pay all the costs, both of law and equity. And it should seem, that at this day a court of law would be of opinion, that cattle belonging to a drover being put into a ground, with the consent of the occupier, to graze only one night, in their way to a fair or market, were not liable to the distress of the *landlord* for rent. Wms. n. 2 Saund. 290, (7)

A grant of a rent charge by one joint tenant is good as to him, and his goods and the goods of those claiming under him may be distrained.

Persons having a joint interest in lands with others, are not liable to a distress for a rent charge granted by the others: thus, if two joint tenants be seised of an estate in fee simple, and one of them grant a rent charge by deed to another person, out of that which belongs to him; in this case, during the life of the grantor, the rent charge is effectual; but after his decease the grant of the rent charge is void, as a charge on the land; for he who has the land by survivorship, shall hold the whole land discharged; because he who survives, claims and has the land by survivorship under the feoffor, &c., which is by a title paramount the grant of the rent charge, and has not, nor can, claim any thing by descent from his companion. Litt. s. 286; 3 Bac. Abr. 697, *Joint tenants*, &c. (I) 5. However, if he who made the charge be the survivor, it is good for ever. Co. Litt. 184 b. It is on the principle of the above case, that if there be two joint tenants in fee, or for lives, and one of them make a lease for years, reserving a rent, and die, the surviving joint tenant shall have the reversion by survivorship; but he shall not have the rent, because he claims to be in the estate from the first feoffor, which is paramount the rent. Dyer, 187 a, [*613] (5); Finch's Law, 13, Pickering's ed.; Co. Litt. *185 a, 318 a; 1 Co. 96 a; 3 Bac. Abr. Gwill. ed. 696, *Joint tenants, &c.* (I) 3, 3; Noy's Max. 4, 19, 9th ed. But if there are several joint tenants, and one grant a rent charge out of the land, the grantee may distrain the cattle of the grantor, but he cannot distrain the cattle of the other joint tenants; although he may distrain the cattle of a stranger that come upon the land. 1 Roll. Abr. 669, pl. 25, 26, 27; 9 Vin. Abr. 145. Rolle says, if there be several joint tenants, and one grant a rent charge, and afterwards leases his part to the other joint tenants *at will*, and they occupy the whole, yet their cattle cannot be distrained for the rent; because the lease at will is void, inasmuch as a joint tenant ought to occupy *per my et per tout* by the law. 1 Roll. Abr. 669, pl. 29. Brooke's Abr. pl. 68, ed. 1573, cites the same case, 11 Hen. 6, 28, where it is in a manner agreed, that where five joint tenants are, and two charge the land with rent, and lease their part to one of the other three, and the grantee distrain him, that this is good; for by taking the lease of the part of the grantors, he shall be in the same plight as the grantors themselves should be; but it would be contrary, if he had occupied his first part only, *i. e.* not accepted the lease. Rolle adds, but admitting the lease at will to them to be good, then their cattle may be distrained for the rent; because they come to the third part, under the charge, and they shall be in the same plight that the grantor himself was.

If the joint tenant who granted the rent charge convey his estate to the other joint tenants, their goods may be distrained.

1 Roll. Abr. 669, pl. 30; 9 Vin. Abr. 146. But if there be two joint tenants in fee, and one of them grant a rent charge out of his part, and afterwards release to his joint companion, and die, he shall hold the land charged, for he is out of the reason and principle stated by Littleton; because he claims not by survivorship, inasmuch as the release prevented the same. So if A., B., and C. be joint tenants in fee, and A. charge his part, and then release to B. and his heirs, and die, the charge is good for ever; because, in that case, B. cannot be in from the first feoffor, because he has a joint companion at the time of the release made, and several writs of *præcipe* must be brought against them. Co. Litt. 185 a; Litt. s. 304; Bro. Abr. *Alienations*, pl. 31. Although the release of one joint tenant to the residue of the joint tenants makes no degree in supposition of law, neither is there any several estate between them; but the estate of him that releases is, as it were, extinguished and drowned in their estate and possession, so as one *præcipe* lies against them, yet shall they hold the land charged as aforesaid. Co. Litt. 185 a. To avoid the above questions, whenever a joint tenant charges his estate with a rent charge, he should sever the joint tenancy.

To avoid questions, the joint tenancy should be severed.

But if there be two coparceners of tenements in fee simple by the *common law, Litt. s. 286, or of copyholds, according to the custom, Co. Litt. 185 a, and before any partition made one of them charge by deed that which to her belongs, with a rent charge, &c., and afterwards die without issue, by which that which belongs to her descends to the other coparcener, in this case the other parcener shall hold the land charged, &c., because she came to this moiety by descent as heir. Litt. s. 286.

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Where a coparcener claims the share of a deceased coparcener as heir, she is liable to a distress for a rent charge, granted by the deceased.

Where there is in one of the coparceners a unity of seisin or possession in the rent, and the land on which it is charged, there, for the benefit of the coparcener entitled to the rent, the law apportions the rent, by extinguishing only so much of it as is proportionate to her share in the land: but still the right of distress is in some degree restrained. So that if a woman be seised of a rent charge, and afterwards the lands charged descend to her and her two sisters in coparcenary, only a third part of the rent is extinct by such unity of estate: but yet the coparcener who has the rent cannot distrain on the land for the other two parts of the rent, until partition be made; because, until that time, she is seised with her two sisters, *per my et per tout* in the land. Bro. Abr. *Distresse*, pl. 37, 64; Co. Litt. 163 b, 169 a, 175 b; Bradby, 57. So, if a man seised of four acres of land have issue, a son and a daughter by one marriage, and two daughters by another marriage, and grant a rent charge out of his land to his son in fee, and the son die without issue in the life of his father, and on the death of the father the land descend to the three daughters, the eldest daughter cannot distrain for the two parts of the rent, until partition be made. Bro. Abr. *Extinguishment and Suspension*, pl. 31.

On a unity of seisin in a rent, and in the land out of which it issues, coparcener cannot distrain until partition.

But where the tenant of the land holds by a title paramount the distress,

Tenant of the

land claiming by a title paramount is not liable to a distress.

he is not liable to it: so, that if a man be seised of a rent charge by *prescription*, issuing out of a manor, it seems he cannot distrain the cattle of the copyholders of the manor, if they have not been accustomed to be distrained: because they are in by prescription also, and therefore their title is as high as that of the owner of the rent. *Cannor* v. *Turner*, 1 Roll. Abr. 669, pl. 32; 9 Vin. Abr. 146. But a *dubitatur* is added. However, it is said in the same case, it is clear, if the owner of the rent has it by *grant*, or otherwise, and not by prescription, the cattle of the copyholders cannot be distrained for it. 1 Roll. 669, pl. 33. So, if a man seised in fee make a lease for life, and afterwards grant a rent charge, if the grantor's cattle come upon the ground, the grantee may distrain them, although he cannot distrain the tenant in possession, because he holds by a title older than the grantee. Brownl. 32; 9 Vin. Abr. 148, pl. 49. So, if a man

[*615] lease at will, and afterwards grant a *rent charge (admitting this does not determine the will, which it seems it does not, as such demises are now generally considered as tenancies from year to year, and require 183 days' notice to quit†, ending with the year, Noy's Max. 118, 9th ed.), the grantee cannot distrain the cattle of the tenant at will, because he was in before the charge, and therefore the tenant of the freehold cannot charge him with a distress before the will be determined. 1 Roll. Abr. 669, pl. 31. But these two last mentioned cases seem to have been derived from the principle of there being no privity between the tenant and grantee without attornment: and it seems, that since the statute 4 Anne, c. 16, the tenant would be liable to be distrained for non-payment of so much of the rent of the lands as is unpaid when he receives notice of the grant of the rent charge, and for so much rent as becomes due afterwards. *Vide ante*, p. 602; *et post*, Vol. 2, p. 273.

Wife surviving, not subject to a distress for rent charge granted by her husband out of her term for years.

As his alienation of the term would bind the wife surviving, he should assign the term upon trusts for securing the annuity.

As the privity of estate must continue, after assignment or re-grant, grantee cannot distrain;

And if a man be possessed of lands for a term of years in the right of his wife, and grant a rent charge, and die, the wife shall avoid the charge, because she does not claim under her husband; but if the husband survive the wife, the charge is good during the term. Co. Litt. 184 b. But the husband's alienation of the term itself, or of any part of it, binds the wife surviving. Hargr. n. Co. Litt. 184 b, (6); Co. Litt. 351 a. See the reason of this difference, Co. Litt. 185 a; and see further, 1 Bac. Abr. 476, Gwill. ed.; *Baron* and *Feme*, (C) 2; Butl. n. Co. Litt. 351 a, (1); 1 Rop. Husband and Wife, 173. Therefore, when a husband charges an annuity on his wife's term for years, he should also absolutely assign the term, upon trusts for securing the annuity.

However, in all cases, the privity of estate must remain; and therefore, if one seised in fee of a rent, grant it to another in fee, or re-grant the rent back to the grantor, either in fee, in tail, or for life, he cannot afterwards

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[† This is not correct. As to the requisite notice to determine a tenancy from year to year, *vide post*, Vol. 4, p. 410.]

distrain for the arrears; because he has by his own act, destroyed all the former privity of estate between himself and the tenant; and in respect to it, he has no more right than any stranger to come upon the land, after such transferring over, or re-granting the rents. *Et sic de similibus.* *Ognel's* case, 4 Co. 49; *Dixon* v. *Harrison*, Vaugh. 40, 43. And it was agreed, *per totam curiam*, if A. have a rent service, or rent charge in fee, or for life, and the rent be in arrear, and afterwards A. grant over the rent to another, and the tenant attorn, which before the statutes 4 Anne, c. 16, s. 9, and 11 Geo. 2, c. 19, s. 11, was in these cases necessary; and afterwards A. die, his executors are not within the 32 Hen. 8, c. 37; for, by the grant over, the arrears were lost, and were not due to the testator at the time of his death, as the statute *speaks; the words being, "in as large and ample manner as the said testator might, and ought to have;" and after the grant, the testator himself, nor any other, could *distrain*, or have any remedy for the arrears: also, in the clause next preceding, touching the *action of debt*, the words are, "unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his death:" so that the act gives no remedy, when the testator himself, by his own act, has dispensed with the arrears; but only when they were due to him at the time of his death, and by the act of God become remediless. *Ognel's* case, 4 Co. 50 b, Vaugh. 40, 41. Nor can the arrears of a rent charge, due at the time of the assignment, be assigned, because they are a mere chose in action. Bradby on Distresses, 52; Vaugh. 40. Such an assignment of the arrears is not, however, wholly void; for, where in a replevin the defendant avowed for *a rent charge and arrears thereof*, assigned by a bargain and sale; and issue being taken on the assignment, the jury found, that they were so assigned: and thereupon verdict for the defendant. On its being moved in arrest of judgment, that the jury had found a void assignment, and therefore a repleader should be awarded, the Court seemed to think, that the objection could not prevail after verdict. *Guilliams* v. *Munington*, Sir Tho. Raym. 200. But the assignee may distrain for a rent charge which becomes due after the assignment; *Maund's* case, Co. Litt. 144 a; 7 Co. 56, French ed., 1671, 28 b, second paging, Serjt. Wilson's ed.†. But if a grantee of a rent charge in fee levy a fine of it, to the use of himself and wife in tail, he has so far the same estate in the rent, as to be capable of distraining for the arrears due before the fine levied. *Witherhead* v. *Harrison*, Sir Tho. Jo. 3: and see further, Vaugh. 43, &c.

nor his executors;

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nor an assignee of arrears:

but assignee may distrain for what becomes due after assignment.

Grantee may distrain for arrears, if the use of a fine of the rent be not declared to a stranger.

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† The *seventh* part of Serjt. Wilson's English edition of Lord Coke's Reports, as well as some of the other editions, commences a new paging after page 28, and causes much trouble: this error has been often exclusively charged on the Irish edition; and it has been the foundation of a general prejudice against Irish editions of other law books.

The grantee may distrain, though the distress be limited to a stranger for his benefit.

If the distress be limited to a stranger for the benefit of the grantee of the rent, yet the grantee himself may distrain for it; for the stranger is his servant in this, and what he may do by his servant, he may do himself; 2 Roll. Abr. 425 (G), pl. 3; 18 Vin. Abr. 479; and Mr. Powell, copying Gilb. on Rents, 42, says, in relation to this case, what a man may do by one servant he may do by any other; 1 Pow. on Contracts, 372: but it seems only to extend to the special case of the king, on account of his prerogative; Co. Litt. 147 a; 7 Co. 23 a; Com. Dig. *Rent*, (C. 8); [*617] which in these cases is more exten*sive than the powers of a subject; Noy's Max. 42, 134, 9th ed.; *Mountjoy's* case, 5 Rep. 4; however, these prerogative powers are not extended to the grantee of the king; Bro. Abr. *Distresse*, pl. 48; excepting in the case of vendees of fee-farm rents of the crown, under 22 Car. 2, c. 6, who may distrain upon all the lands of the original grantor. Bradby, 93.

An annuitant, with a power of distress, may distrain for arrears, though a term be vested in himself, to secure the payment.

In replevin, the defendant made cognizance as bailiff of Nathaniel Pigott, Esquire, upon a distress for 750*l.* arrears of an annuity or yearly rent; stating, that on the 5th and 6th of January, 1776, the plaintiff for valuable consideration did, by lease and release, convey to Sir Michael le Fleming and James Rodney, and their heirs, among other things, the lands in which the distress was taken, to the use of the said Pigott for *ninety-nine years*, if he so long lived, on the trusts therein after-mentioned, and subject thereto, to the use of the said Ann Fairfax, the plaintiff, for her life, with divers remainders over. The *trust* of the term is declared to be, that the said Pigott might yearly, *during his life*, receive and take thereout an annuity or rent of 250*l.* by equal half yearly payments, at Michaelmas and Lady-day, *with power to enter and distrain for arrears;* —and then justifies for a distress for 750*l.* for three years' arrears due Lady-day, 1779. To this cognizance the plaintiff demurs, and the defendant joins in demurrer.

Adair, for the plaintiff, objected, that the ninety-nine years' term being vested in Pigott, he could not distrain upon lands in his own legal possession; though he might bring an ejectment.

But by *Blackstone*, Justice, (*absente De Grey*, Chief Justice, and *Gould*, Justice)—I look upon Mrs. Fairfax, during the ninety-nine years' term to be, by her own act and consent, a mere *under tenant* to Pigott, at the rate of 250*l. per annum*, for which he has paid a valuable consideration. *To this rent a distress is incident by law, exclusive of the clause in the deed.* So that there is no colour for the objection. *Nares*, Justice, of the same opinion, for this and many other reasons. Judgment for the cognizor. *Fairfax* v. *Gray*, 2 Wm. Bla. Rep. 1326.

4 Geo. 2, c. 28, s. 4, Serjt. Hill's MS. notes to W. Bla. Rep.

The late Mr. Serjeant Hill, referring to the above case, says, " though the opinion is given there exclusive of the clause in the deed, yet, as there was a clause for distress in the deed, the opinion was extrajudicial. Serjeant Hill's MS. notes to 2 Vin. Abr. 516; 9 Vin. Abr. 125; 15 Vin.

Abr. 362, in Lincoln's Inn library: and from the learned serjeant's manuscript notes to Sir Wm. Blackstone's Reports, he appears to have thought that the learned judge referred to the 4 Geo. 2, c. 28; but he evidently meant that Mrs. Fairfax's occupation was a mere tenancy under Mr. Pigott. *Sed quære.*

Rents seck, as well as rents service and rents charge, may be recovered by distress. [*618]

*The remedy by distress is, by the common law, incident to a rent service; but to have constituted a rent charge, a power of distress must have been expressly given by the deed; 6 Bac. Abr. 34, *Rent*, (K); by the common law, no distress was incident to a rent seck; but now, by the statute 4 Geo. 2, c. 28, s. 5, after reciting "*Whereas*, the remedy for recovering rents seck, rents of assize, and chief rents, are tedious and difficult," it is enacted, "That from and after the twenty-fourth day of *June*, one thousand seven hundred and thirty-one, all and every person or persons, bodies politic and corporate, shall and may have the like remedy by distress, and by impounding and selling the same, in cases of rent seck, rents of assize, and chief rents, which have been duly answered or paid for the space of three years, within the space of twenty-one years before the first day of this present session of parliament [the twenty-first day of January, one thousand seven hundred and thirty-one], or shall be hereafter created, as in case of rent reserved upon lease, any law or usage to the contrary notwithstanding."

A rent granted since the statute *quia emptores*, and before this statute, must be brought within it in an avowry.

For a rent, without an express clause of distress, granted in fee since the statute of *quia emptores*, and before the passing of this statute, there cannot be a distress but under this statute; and therefore, in an avowry for such a distress, the case must be brought within it. *Bradbury* v. *Wright*, Doug. 627.

Mr. Justice Blackstone says, "the statute 4 Geo. II. c. 28, extended the same remedy to all rents alike, and thereby in effect abolished all material distinction between them. So that now we may lay it down as an universal principle, that a distress may be taken for any kind of rent in arrear; the detaining whereof beyond the day of payment, is an injury to him that is entitled to receive it." 3 Bla. Com. 6, 7. This must however be understood with some limitation; for, at the common law, it was not every reservation, though *nominally of rent*, which constituted a *rent*, properly so called: for, as it appears, *ante*, p. 581, if an annual sum of money were reserved upon the grant of an incorporeal hereditament, the sum so reserved was not a *rent*, but only a personal *annuity*. And therefore nothing is distrainable within the statute of Geo. II. which is no such a reservation as would have been at least a *rent seck* at the common law; and it appears to have been a rule of the common law, that a *rent* could not issue out of a mere chattel. See *Butt's* case, 7 Co. 23, 24 b; *post*, p. 620; Bradby, 100.

It seems that nothing is distrainable within 4 Geo. 2, c. 28, s. 4, but what would have been at least a rent seck at common law.

A rent cannot issue out of a term for years,

Thus, in replevin, the defendant avowed under a distress for rent due from the plaintiff to him, upon an assignment of a lease of a term

so as to authorize a distress; unless there be a reversion in the distrainor, or an express clause of distress.

for years to the plaintiff, in which assignment there was *no clause of* **distress;* the single question was, whether this was such a rent for which a distress laid, there being no reversion in the defendant. It was said for the defendant, that although rent be incident to the reversion, yet it is not an inseparable incident, and that therefore it may be severed from the reversion; and that although there is no clause of distress in the assignment [*619] of the term, yet the rent reserved thereupon may be considered as rent seck, and distrained for by the statute 4 Geo. II. c. 28, s. 5; and that it appeared clearly to be the intent of the parties, that the plaintiff should pay rent to the defendant. This case was so clear, that the Court gave judgment for the plaintiff without hearing his counsel. *Curia.*—" There are two ways of creating a rent: the owner of the lands either grants a rent out of it, or grants the lands and reserves a rent; there is no such thing as a rent seck, rent service, or rent charge, issuing out of a term for years. Bro. *Dette*, pl. 39, cites 43 Ed. III. 4, [8]. *Per Finchden* [*Finch*], Ch. Justice, C. B.—If a man hath a term for years, and grants all his estate of the term, rendering certain rent, he cannot distrain if the rent be in arrear. This case is law, and in point; therefore, if the avowant will recover what is owing to him from the plaintiff, he must bring his action upon the contract." Judgment for the plaintiff, *per totam curiam.* ——— v. *Cooper*, 2 Wils. 375. [*S. P. Parmenter* v. *Webber*, 8 Taunt. 593; *S. C.* 3 J. B. Moore, 656.]

A similar principle was adopted in a more recent case than that last cited, where a lessee for years assigned over his term, and afterwards the lease came back into the hands of the original lessor by an agreement between him and the assignee, that the lessor should have possession of the premises, paying the assignee a certain sum annually above the rent, towards the good-will already paid by the assignee: it was held, that such agreement operated as a surrender of the whole term; and therefore, that the sum so reserved, was a mere *annual sum in gross*, and not a rent for which the assignee could distrain; but that he had a remedy by *assumpsit* for the sum reserved for the good-will. *Smith* v. *Mapleback*, 1 Term Rep. 443.

The point determined by the above cited cases is, that an annual sum of money reserved upon a *chattel*, in which the lessor has no reversion, is not a *rent*, but a mere *annuity*, and therefore is not distrainable as a *rent seck*, under the statute of Geo. II. But these cases (allowing to them the fullest authority) do not at all apply to any reservation or grant of rent during an estate of *freehold*, which was unquestionably a *rent* at the common law, and as such is distrainable as a *rent seck* within the statute, without a reversion or a clause of distress. Nor do they apply to a re- [*620] servation, or grant of a rent out of a *term for years, when there is a clause of distress expressly given by the deed.

A rent cannot

Thus in *Butt's* case, 7 Co. 23, Serjt. Wilson's ed. 51, French ed. In

replevin, between *Fish* and *Butt*, the case in effect was, one seised of Black-acre in fee, and also possessed of White-acre for years, by his deed granted a rent out of both to A., to have and perceive to him for the term of his life, *with clause of distress in both;* and for rent behind, A. distrained, and avowed in White-acre; and if the distress were well taken or not, was the question. And it was agreed by the whole Court, that the distress was well taken. And in this case these points were resolved:—1. That if lessee for years of a carve of land grant to another a rent out of the said carve, for the life of the grantee, that is a good charge during the term, if the grantee so long live; for the grant shall be taken more strong against the grantor, and shall not be void, when by any construction it may be made good, (*vide* Plowd. Comment. in *Welchden's* case); and, in such case, the grantee has but a chattel. So if the lessee for years grant the carve of land to another for the term of his life, he has the whole term if he live so long, as well as in the case of a devise. 2. It was resolved, that when a rent is granted out of land in fee, and out of a term for years, to have and perceive to the grantee for the term of his life, that this, as an estate of freehold, according to the purport of the deed, cannot issue out of the term for years, but out of the land which the grantor hath in fee simple only; because the freehold of the rent can issue out of that, and not out of the chattel. And one entire rent cannot be a freehold out of Black-acre, and a chattel out of White-acre. And to make two rents, when one only is granted by one to another, would be, in this case, injurious; and the bargain and mutual agreement of the parties cannot charge such thing with rent which is not chargeable by the law, as out of an hundred or advowson, 30 *lib. Assisarum*, pl. 5; out of a fair, 14 E. 3; *scire facias*, 122, the Earl of *Kent's* case; neither can a rent be granted or reserved of any estate of freehold out of any other hereditament which is not manurable, either in possession, reversion, or by possibility, but is *hereditamentum incorporeum;* for *pacta privata non derogant juri communi:* and in an assize they cannot be put in view, nor can any distress be taken in them. But in the case at bar, White-acre is *hereditamentum corporeum*, and manurable; but for the smallness and incapacity of the interest that the grantor has in it, this rent of freehold cannot issue thereout, but shall issue only out of the land in fee simple. And in the case at bar, in an assize brought of this rent, the land in fee shall only be put in view, and if the grantee ac*cept a lease or grant of White-acre, it [*621] will not suspend his rent. 3. It was resolved, that White-acre should, during the term, be subject to the distress of the grantee for the rent during the years, although the rent does not issue thereout, as in 41 (46) Ed. 3, 14, when land is charged with a rent in fee, goods and chattels may be bound to the distress. And it was said, forasmnch as White-acre is only charged with distress, and the rent does not issue thereout, if the grantee take a lease of any part thereof, it is no suspension of the distress,

issue out of a chattel, but a term may be subjected to a distress by an express power.

but that he may distrain in the residue; for it is not issuing out of the land, but to be taken on the land: as, if I have a warren in another's land, and take a lease of parcel of the land, although the land be charged with warren, yet forasmuch as it doth not issue out of the land, it is not any suspension. But as the avowant pleaded the grant out of the term for years only; and concluded *virtute cujus*, he was seised *in dominico suo ut de libero tenemento pro termino vitæ suæ*, which is repugnant to have a freehold out of a term for years; judgment was given against the avowant, for insufficient pleading.

Grant of rent in one parcel of land and distress in another.

In the grant of a rent charge, it appears, *ante*, p. 583, that the rent may issue out of one parcel of land, and the distress be reserved in another; and in this case, whether the lands lie within the same or different counties, it seems, that the distress can be taken only on the land in which it is reserved. Litt. s. 221. But both parcels of land are charged, one with the rent, and the other with a distress for the rent; one issuing out of the land, and the other to be taken upon the land. Co. Litt. 147 a. In *Butt's* case, 7 Co. 24 a; 52, French ed., it is said, that as the parties have expressly limited out of what land the rent shall issue, and in what land the distress shall be taken, the law will not make an exposition against the express words and intent of the parties; when it may stand with the rule of law, *quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est.* Co. Litt. 147 a; Wingate's Maxims, 24; 2 Saund. 167; 14 Vin. Abr. 58, pl. 6; 2 Roll. Abr. 425, (E) pl. 2; 18 Vin. Abr. 478, pl. 2. *Sed quære*—Whether the 4 Geo. 2, c. 28, s. 5, has not altered the law in this respect, and enabled the grantee in such a case to distrain in both parcels of land, unless the parcel, out of which the rent is issuing, be expressly exempted from the distress?

Devise of a rent.

When a testator had a power to distrain for a rent at common law, and devised the rent, the devisee could distrain without attornment: but if the devisor had not that power, he could not confer it on his devisee, according to the rule in *Finch's* case; 5 Co. 113; Co. Litt. *309 b; *Nemo potest plus juris ad alium transferre quam in ipso est: Nil dat quod in se non habet. Long* v. *Buckeridge*, 1 Str. 109, 111. Where a rent for an estate of freehold was devised out of a freehold without any estate in the land, it seems formerly to have been necessary for the devisor to give a power of distress; that is, in effect to make it a rent charge, in order to entitle the devisee to distrain. *Gouge* v. *Hayward*, Bridgm. 53. And although this is not now necessary, as a *freehold* rent devised out of a *freehold* must be considered as a rent seck, to which the statute 4 Geo. 2, c. 28, s. 5, has extended the right of distress; Bradby, 89; [*Buttery* v. *Robinson*, 3 Bingh. 392; see also *Saward* v. *Anstey*, 10 J. B. Moore, 60;] yet it is usual to give such an express power by the will since the statute.

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Power of distress not necessary on creating a freehold rent by devise.

There is, however, one considerable difference between the devise of a freehold estate, or a freehold rent, and the bequest of a chattel interest: for a devise vests absolutely by the testator's will, but the interest of the legatee must await the executor's assent to the bequest; and therefore, before such assent, the interest remains in the executor, and consequently the legatee cannot distrain, although an express power of distress be given by the will. Toller's Law of Executors, 306, 307. This assent may be either express or implied; but it must relate to the particular subject of the legacy. Thus, if a lessee for years bequeath a rent to A., issuing out of the land, and bequeath the land to B., the executor's assent that A. should have the rent, is no assent that B. should have the land, because the rent and the land are distinct legacies. *Gouge* v. *Hayward*, Bridgm. 55. But under special circumstances, an executor's assent to one legacy may enure to another; as if the case last mentioned be reversed; the executor's assent that B. should have the land, seems to imply his assent that A. should have the rent; for the necessity of the executor's assent is established with a view to creditors: now to them the land is equally unproductive, whether it passes to B. charged with the rent or not; for if the testator's estate were indebted, after this assent, to the bequest of the term, the term cannot be put in execution for this debt, but the assent of the executor is in him a *devastavit*. *Gouge* v. *Hayward*, Bridgm. 55. And also, as it was the testator's intention that B. should hold the land subject to the rent to A., the executor's assent to B.'s having the land shall, in conformity to the will, be construed an assent to the legacy to A. Off. Ex. 237; Toll. Ex. 310. *Welcden* v. *Elkington*, Plowd. 521, S. P. 1 Roll. Abr. 620 (E), pl. 3; Godolphin's Orphan's Legacy, 360, 4th ed. So, if a man bequeath a term to his wife during her widowhood, and if she marry, then a rent to her out of the land, with a clause of distress, Bridgm. 53, and make the wife executrix, and die, *and the wife [*623] agree to the legacies, and afterwards marry, Rolle says it was adjudged that the rent shall rise to her well enough, though she once had the whole term in her as executrix, for this future rent shall not be extinct thereby; *Goffe* v. *Hayward*, 1 Roll. Abr. 610, pl. 8; but it appears that there was no judgment given; Roll. Rep. 247, pl. 17, 368, pl. 23; *Gough* v. *Howard*, 3 Buls. 121; and in Bridgman's Rep. it is said, the Court was equally divided on this point. Bridg. 56. See Godolph. Orph. Leg. 244.

Difference between a devise and a bequest of a rent.

Devise vests absolutely by the will;

but the executor must assent, either expressly or impliedly, to a bequest.

Although the statute 4 Geo. 2, c. 28, s. 5, has given a remedy by distress for recovering a fee farm rent, as a rent seck, when there is no power of distress, yet as a distress is not incident to this rent by the common law, it is usual, since the statute, to give an express power of distress, and thereby make it a rent charge. And it has been recommended to create the rent by way of declaration of use, rather than of reservation; 3 Pres. Abs. 54; in order to bring it within the stat. 27 Hen. 8, c. 10, s. 4, *ante*

Power of distress usually given on creating a fee farm rent;

603, which renders an express power of distress unnecessary; although even in that case an express power of distress is usually given. And since the statute of Geo. 2, in creating a rent for life or lives out of *freehold* lands, it is the almost invariable practice to give an express power of distress, although such a rent may be recovered by distress, as a rent seck, under the statute; Watk. Conv. 89, 2d ed. Pres. ed. 157. And although it is stated in 6 Bac. Abr. 6, Gwill. ed.; 4 Bac. Abr. 337, 4th ed. *Rent* (A) 3, that if a man seised in fee grant a rent for *years* without a clause of distress, it is a rent seck, yet as (Litt. s. 215, 218; *Morris* v. *Prince*, Cro. Car. 520; Keilw. 104, pl. 11; *Walsal* v. *Heath*, Cro. Eliz. 656,) the authorities cited do not support that proposition; and as the old law books never mention a rent seck for years, but always assume it to be granted in fee, in tail, or for life; Lit. s. 217, 218; 2 Roll. Abr. 423, (B); 18 Vin. Abr. 473; Com. Dig. *Rent*, (C. 9); and as an assize cannot be had for recovering a rent by a tenant for years, Com. Dig. *Assize* (B. 5), but only lies for a rent service, rent charge, or rent seck, when it is *de libero tenemento*, 8 Co. 46 a, viz. of an estate of freehold or inheritance; Com. Dig. *Rent* (D. 1); *Assise* (B. 2); and as the old books state, that if the grantee were never *seised* of the rent, he is without remedy; Litt. s. 217, 341; 2 Roll. Abr. 424 (C); 18 Vin. Abr. 474 (C); Vaugh. 48; and as a seisin cannot be had of a chattel interest, but only a possession,—an express power of distress is invariably given on creating a rent for years, to be issuing out of a freehold estate. In creating a rent for life, or years, or for years determinable on a life or lives, to be issuing out of a chattel interest, it appears, *ante*, p. 618, *619, that a power of distress is absolutely necessary to enable the grantee to distrain, unless he has the reversion of the lands.

or a rent for life or lives out of freehold lands;

or a rent for years out of a freehold since the 4 Geo. 2, c. 28.

Power of distress necessary on creating a rent out of a chattel interest.

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Although a rent be not well reserved or granted at law, it may be good in equity: thus the land will be incumbered in equity with the annual sum intended as a rent; and such incumbrance will be binding on the land, into whose hands soever the land shall come. Such annual sum should be treated as a charge, by way of lien. 3 Pres. Abs. 55.

A rent not well reserved or granted at law, binds the land in equity.

The power of distress is usually given to the grantee, his heirs and assigns, or to him, his executors, administrators, and assigns, according to the nature of the grant, in case the annuity or rent charge be behind for a certain number of days; and the distress in pound to detain, until the annuity or rent charge, and all arrears thereof, and all costs, charges, and expenses whatsoever sustained or occasioned by or attending the making, taking, and keeping such distress, shall be fully paid and satisfied; *and in default of payment thereof* in due time after such distress shall be made and taken, *to appraise, sell, or otherwise act* therein, according to the due course of law, *in the same manner in all respects as landlords are by act of parliament authorized to do in respect to distresses for arrears of rent upon leases for years*. This power is not to be understood to authorize the

The usual manner of giving a power of distress.

grantor and his representatives to *make* a distress in the same manner as landlords and their representatives are enabled to do for arrears of rent upon leases for *years*, but only to *act therein* as to selling, &c. *after the distress is taken;* for although rents, in which a testator or intestate had an estate of freehold, or of freehold and inheritance, are within the statute 32 Hen. 8, c. 37; *ante*, p. 605; yet for *arrears incurred in his lifetime*, on a lease for *years*, no distress can be made by his executors or administrators, otherwise than at common law. Now, at the common law, there does not seem to be any case in which executors or administrators can distrain for the arrears due in the life of their deceased testator or intestate, unless the term, with the reversion thereon, vest in them in their representative characters. As if lessee for fifty years lease for twenty years, reserving rent, and die during the latter term; here the term will vest in his executors, with the reversion for the residue of the fifty years; and therefore, in respect of that reversion, they may distrain for the arrears at the common law; and, as it should seem, may even distrain for them as in their own right; because these arrears were never severed from the reversion, but the executors have the reversion, and the rent is annexed thereto, and in the same plight as the testator himself had it, inasmuch as they represent the person of the testator; and it is not like the case of a freehold reversion which descends to the *heir, and the arrears due in the ancestor's lifetime go to his executors; *Wade* v. *Marsh*, 1 Roll. Abr. 672, pl. 13; Latch, 211; 11 Vin. Abr. 423, pl. 17; Bradby, 32.

Executors or administrators cannot distrain for arrears of rent on a lease for years, unless the reversion be also in them.

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If the testator by his will specifically bequeath his reversionary interest in the term, it is necessary that his executor should distrain for the arrears, before his assent to the legacy; as the reversion will thereby be vested in the legatee; *vide ante*, p. 622; and being thus divested out of the executor by his own assent, it should seem that he can no longer distrain for the arrears incurred in his testator's lifetime, although he may have an action on the contract against the lessee. But where a term for years vests in executors or administrators, they may of course distrain for the rent accruing in their own time, as if they were entitled to it in their own right.

Executor should distrain for arrears of rent before he assents to a bequest of the term.

A distinction is taken between a power to re-enter, or a *nomine pœnæ*, and a power to *distrain;* as where a rent is granted payable, &c. and in default of payment, *if it be demanded*, the grantee *may distrain*. In this case it is held not to be necessary to make a demand *on the day* the rent becomes due, as in the case of a re-entry, or a *nomine pœnæ*, where the contrary is not stipulated, but he may demand the rent at any time after, to enable him to distrain; Co. Litt. 202 a, 144 a; *Maund's* case, 7 Co. 28 b; *Foster* v. *Wandlass*, 7 Term Rep. 119; Wms. n. 1 Saund. 287 b; Gilb. Rents, 73, 79, 83; even although the land should be in possession of a stranger. *Umphery* v. *Damyon*, 1 Buls. 181. *Vide* Vol. 2, p. 13.

A distress may be made under a power, although not demanded on the day it becomes due.

When an annuity is granted, to be issuing out of a copyhold estate, it

A power of dis-

tress not usually given on copyhold premises alone.

is not usual to give a power of distress; because it has been conceived that a copyholder cannot grant such a power. However, Lord Coke expressly says, that such a rent charge extends as well to estates by the custom, as to estates at the common law. Co. Litt. 185 a. And it seems, that such a power of distress is good against every person claiming under the grantor, but not against the lord who claims by a title paramount. See Gilb. Ten. 297; 2 Watk. Cop. [63-4.] When an annuity is granted out of copyholds and freeholds, the power of distress is generally extended to both the copyholds and freeholds. It seems to be doubtful, whether rents issuing out of a copyhold, are rents seck within the 4 Geo. II. c. 28, s. 5; see Watk. n. Gilb. Ten. 468; 2 Watk. Cop. 181, 191; but it has been said, that they are within the statute. 1 Scriven on Copyholds, 101, 2d ed.; Fisher on Copyholds, 138, 2d ed. See as to the practice in relation to copyholds, *ante*, p. 563, n. (*c*).

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For further as to the remedy by distress, see Viner's and Bacon's Abridgments, Comyn's Digest, Burn's Justice, and Gilbert on Dis*tresses, and Gilbert on Rents; but particularly Mr. Bradby's Treatise on the Law of Distresses, which treats of the subject in a very scientific manner: however, on reading the 53d page of his Treatise, it should be remembered, that neither of the annuity acts requires the grant of a rent charge in tail or in fee to be enrolled; but only grants "for one or more life or lives, or for any term of years or greater estate, determinable on one or more life or lives." *Vide ante*, p. 357, 330.

Annuity acts do not extend to grants in tail or in fee.

Power of entry.

In addition to the power of distress, a power of entry on the lands is given to the grantee of an annuity or rent charge, and his representatives, on default in paying the annuity or rent charge for a certain number of days.

1st, Taking effect under the statute of uses.

If the power of entry be limited by way of use, it takes effect from the statute of uses; as if A., by feoffment, lease and release, fine, or common recovery, convey an estate to C. and his heirs, to the use, intent, and purpose, that B. may receive out of the lands so conveyed a certain annual sum; and to this further use, intent, and purpose, that if such annual sum, or any part of it, be unpaid by a certain time, it shall be lawful for B. and his assigns to enter upon and hold possession of the land, and receive the rents and profits of it, until the arrears are satisfied: here, as soon as the rent is in arrear, an use, which is served out of the original seisin of the feoffee, releasee, conusee, or recoveror, springs up and vests in the person to whom the power is given. This use is immediately transferred into possession by the statute: he has consequently a *right* to take and keep that possession, till the purpose for which it is executed is satisfied, and then the use determines. Gilb. on Rents, 137, 138; 6 Bac. Abr. 38, *Rents*, (K), 4; Butl. n. Co. Litt. 203 a, (3). By virtue of this estate he

may make a lease for years, to try his title in ejectment, either to obtain the possession of the lands, *if it be withheld from him*, or to restore it if it be disturbed or divested; and if he assign the annual sum, this right of entry, and perception of the rents and profits of the lands charged with the payment of it, passes with it to the assignee; because it is a matter of inheritance and waits upon the rent, and not a mere possibility, or a contingent estate, not coupled with any other estate, in which case it would not pass by a grant of the rent. *Havergill* v. *Hare*, Cro. Jac. 510; Sug. n. Gilb. Uses, 178. This case must be distinguished from the limitation of a *shifting use* to a man, his heirs and assigns, which will not pass to an assignee; as was decided in the case of the Earl of *Kent* v. *Steward*, Cro. Car. 358; 2 Roll. Abr. 49, pl. 4, 792, pl. 1, 795, pl. 9; 13 Vin. Abr. 226; 14 Vin. Abr. 76; 22 Vin. Abr. *222, 228: where, upon a conveyance to one in fee, a shifting use was created in another estate in favour of the same person, his heirs and assigns, in case he or they should be evicted out of the first estate. The first estate was aliened, and the assignee was evicted; and it was determined that the assignee could not enter on the other estate, but that the shifting use, on eviction, ought first to vest in the person to whom it was limited; for the words 'heirs and assigns,' are to be taken as words of limitation, and it shall not first vest in the assignee as purchaser; and it is not such an interest as is assignable over before eviction.

Distinction between a *springing* and a *shifting* use.

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But a distinction must be made between a power of entry limited by way of use, and a grant of a rent to be issuing out of certain lands, with a proviso, declaration, or covenant, that if the rent be in arrear, the grantee may enter, &c. In the latter case, when the rent is in arrear, the grantee or his assignee, *Havergill* v. *Hare*, Cro. Jac. 511-512, may enter, by virtue of such proviso, and hold the lands until he be paid the rent by the perception of the profits: for although it has been objected that there is no estate conveyed, or no seisin in any person, out of which an use can arise to the grantee upon non-payment of the rent: and that this grant can pass no estate to the grantee as a conveyance at common law; because the grantee can have no inheritance or freehold in the land when the rent becomes in arrear, for want of *livery*, nor an estate for years, for want of a *certain commencement and determination*: yet it has been adjudged, that by the grant he has an *interest* vested in him when the rent becomes in arrear; as in the case of a feoffment rendering rent, with condition, on non-payment, to re-enter and retain till satisfied, which is a good grant by the intention of the parties; Litt. sec. 327; and yet there is no livery by the feoffee to reconvey the land, nor any express grant, but only a condition to re-enter and take the profits until he be satisfied; for a man may grant an inheritance of an *interest* in the land without livery as *vesturam terræ*, 17 E. 2. 6. Hutt. 44; Fitz. *Precipe*, 55; so he may grant the trees, which are an inheritance, or inherent in the land: and although the power

2d, As a power of entry at common law.

of entry be an *uncertain interest*, which, for the uncertainty of its commencement and determination, might be void by the strict rules of law, if it were granted independent on any certain estate; yet it is good in this case, because it is created to attend a determinate estate, and non-payment of the rent fixes the *certainty* of its *beginning*, and the satisfaction of the arrears, by the perception of the profits, the *end* and *determination* of such interest; and, therefore, the grantee may reduce such interest, as it arises, into his possession by ejectment, which is the proper method to recover the possession. Gilb. on Rents, 139.

[*628] The nature of the estate under a power of entry.

When *the rent is granted in fee, the power of entry is an inheritance, and descends with the rent to the heir; but when the entry is made, it is then no more than a chattel interest in the land, which shall go with the arrears to the executors. Butl. n. Co. Litt. 203 a, (2). But if it were not for the words, "and to retain until he be satisfied out of the profits," it would be an inheritance in the land to remain in the heir as a penalty; but by reason of those words it is only a chattel, and shall go to the executors, who are the persons that are to be satisfied of these arrears. However, as after entry, under a common power of entry and perception, the grantee or his representatives cannot cut trees or commit waste, but only take the ordinary profits; it should be added at the end of the power, when the grantor either has the fee or an estate unimpeachable for waste; "and such possession, when taken, to be without impeachment of waste:" but this addition, of course, should not be inserted, when the grantor himself is impeachable for waste. See *Havergill* v. *Hare*, Cro. Jac. 510; 2 Roll. Rep. 2; Poph. 126. 147; 3 Bulstr. 250; *Jemott* v. *Cowley*, 1 Saund. 112 a; 1 Lev. 170; 1 Sid. 223. 261. 344; Sir T. Raym. 135. 158. *S. C.*; *Parkhurst* v. *Smith*, Willes, 340, Bridgm. ed. Bull. N. P. 104, (a); Runnington's ed. Gilb. Ejectment, 64, ed. 1795; *Brich* v. *Wright*, 1 Term Rep. 378, *ante*, p. 566.

Without express words, the grantee cannot commit waste.

Power of entry not extended to copyholds.

This power of entry cannot extend to copyholds; because, 1st, copyholds are not within the statute of uses; Gilb. Ten. 182; Co. Cop. s. 54, Tr. 124; Noy's Max. 319, 9th ed.; 2dly, the tenant has no power to convey a copyhold estate except by surrender, according to the custom; for if he had, the lord would have a tenant brought into the estate without his admittance or consent. Gilb. Ten. 181. 185. *Vide ante*, p. 563, n. (c).

Equity will direct a sale in order to raise arrears of rent charge.

[In addition to the remedies at law which the owner of a rent charge has for its recovery, it seems he may in some cases by a suit in equity compel a sale for the arrears.

Thus in *Cupit* v. *Jackson*, M'Clel. 495, where, on the marriage of T. B. with E. J. certain lands were limited to the use and intent, (among other limitations), that T. B. should receive during his life an annuity or yearly rent of 60*l.*, and to which were annexed the usual powers of distress and entry. At his death, arrears to the amount of 450*l.* were due, and his executors filed a bill against the owner in fee of the lands, praying payment of

the arrears, and that they might be raised by sale or mortgage. Lord C. B. *Alexander* held, that though the plaintiff had legal remedies for the recovery of the rent charge, yet this was no bar to the equitable relief sought, which was more convenient and effectual; and he was of opinion, that the Court had a right to raise the arrears out of the estate, if necessary, by sale or mortgage, the charge being an incumbrance on the estate. The learned Chief Baron relied upon the case of the Duke of *Leeds* v. Corporation of *New Radnor*, 2 B. C. C. 338, 518, as an authority for this doctrine, in which case he observed a bill was filed for a fee farm rent, and the Lord Chancellor, reversing a decree at the Rolls, granted the relief prayed.

Remarks upon *Cupit* v. *Jackson*.

In the case referred to, however, the bill did not pray a sale, but merely an account, and that the lands might be declared to be charged, &c. One of the allegations, too, was, that the plaintiff's remedy at law was imperfect, as the boundaries of the lands had been changed, and the rent was partly charged on tolls and other incorporeal hereditaments, which were not distrainable; and the several cases cited by Lord *Thurlow* in his judgment had the same characteristic, namely, the inadequacy of the legal remedies. His Lordship certainly does not appear to have declared as a general proposition, that the arrears of a rent charge might in all cases be raised in equity by sale or mortgage. Such a rule indeed might, in some cases, produce great injustice. Thus, suppose a rent charge was limited to A. for life, and the lands charged therewith were settled upon B. for life, with remainder to his first and other sons in tail: if A. was at liberty to resort to a Court of equity, to have the arrears of the rent, which his own negligence had permitted to accrue, raised by a sale, the consequence would be, that a portion of the inheritance might be taken from the issue of B., in order to raise a charge, which might, by means of the annual rents, have been satisfied exclusively out of the estate of B. the tenant for life, during which they accrued, and by whom therefore they ought to have been borne. The doctrine in question, too, seems to be inconsistent with the principle of those cases, in which the question has been agitated, whether the Court was authorized to direct a sale, in order to raise a gross sum, payable out of the rents and profits†; for, if the Court could by this means raise the arrears of a rent charge, secured by powers of distress and entry, there never could have been any question as to the right to raise a gross sum, though charged on the *annual* profits; whereas the rule established by these cases is, that the sale is not warranted, where rents and profits are explained to mean *annual* rents and profits.

Value of annuity raisable by sale in case of bankruptcy.

It seems, that where the grantor of a rent charge has become bankrupt, and the value is proveable under the commission (as to which, *vide ante*, p. 472) the annuitant may obtain an order for sale as in the case of a mortgage.

† See these cases collected, 1 Jarm. Pow. Dev. 234, n.

Thus, in *Ex parte Price*, 3 Madd. 132, where P. agreed to pay A. an annuity of 40*l.* during his life, in consideration of 400*l.*; and a bond and warrant of attorney were given to secure the same; and two years afterwards P. deposited a lease with A. as a further security*: P. having become bankrupt, A. filed a petition, praying that it might be referred to the commissioners to value the annuity, and that the lease might be sold, and the produce applied in satisfaction of the arrears and value, (after payment of costs); and that he might prove for the residue: Sir *J. Leach*, V. C. granted the petition accordingly. Indeed, the only objection insisted on, was, that the security was not memorialized; but the Vice Chancellor held, that, as it formed no part of the agreement when the annuity was granted, a memorial was not necessary†.

So, in an unreported case (with a note of which the editor has been favored) in the matter of *Mott*, a bankrupt, before the same learned Judge, his Honor, on the petition of a life annuitant, ordered the freehold hereditaments charged with the annuity to be sold, and out of the purchase-money the arrears and value to be paid to the petitioner, and the expenses attending the sale, and that the petitioner might prove any deficiency under the commission. 29th March, 1822. MS.

Rent charges not barred by the statute of limitations.

It should be noticed in this place, that the statute of limitations does not apply to a rent charge, and therefore cannot be pleaded as a bar to a claim of arrears either at law or in equity. *Collins* v. *Goodall*, 2 Vern. 235; *Stackhouse* v. *Barnston*, 10 Ves. 467; *Cupit* v. *Jackson*, M'Clel. 505; See also *Bonnington* v. *Wanthall*, 2 Ch. Rep. 219. But after a great lapse of time without demand, a release or extinguishment of the rent will be presumed. In *Eldridge* v. *Knott*, Cowp. 214, Mr. Baron *Eyre* directed a jury to presume a release or extinguishment of a *quit rent* belonging to the lord of a manor after non-claim for thirty-seven years, and though Lord *Mansfield* and the rest of the Court of King's Bench‡ granted a new trial, on the ground that such a rent being within the stat. 32 Hen.

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* For the law respecting deposit securities, *vide* Index to Vol. 5, title, "DEPOSIT SECURITY."

† How could a deposit security be the subject of a memorial? To hold a memorial to be necessary, would be to say, that an annuity could not be so secured. If any additional instrument for securing an annuity were executed before the expiration of the period of enrolment prescribed by the act, (*i. e.* within thirty days after the grant), it would be prudent to include it in the memorial.

‡ The arguments founded on the *small amount* of the rent, (which was but 2*s.* 6*d.*, a sum for which it was said the lord might think it not worth while to bring an action), savour strongly of that laxity of reasoning which so much distinguished the Court during the period that Lord *Mansfield* presided over it.

8, c. 2, s. 4, which requires persons making avowry for any rent, suit, or service to have been seised within fifty years, no presumption of extinguishment ought to arise in a shorter period; yet they admitted the general doctrine of presumption as applicable to rents.

It is probable that, both at law and in equity, the extinguishment of a rent-charge would now be presumed after non-claim for a period of twenty years.]

A personal annuity, or an annuity or rent, charged on a term for years, may be effectually limited to executors and administrators *pur autre vie.*

It was intended to have been stated, *ante*, p. 596, that there appears to be no objection to the grant of a personal annuity to the grantee, his executors, administrators, and assigns, *pur autre vie*, because it is not a freehold, but only a chattel. *Savery* v. *Dyer*, Ambl. 139; 1 Dick. 162, *S. C. ante*, p. 594. However, when it is granted with words of inheritance, it is descendible to the heir, and the property itself is so far real, although it is personal only as to the security and the remedy. *Turner* v. *Turner*, 1 Bro. C. C. 325; 2 Wooddeson's Lectures, 72—75; 3 Ibid. 81; *Holdernesse* v. *Carmarthen*, 1 Bro. C. C. 382; *Stafford* v. *Buckley*, 2 Ves. sen. 170, *ante*, p. 583. So there appears to be no objection to the grant of an annuity or rent charge to the grantee, his executors, administrators, and assigns, *pur autre vie*, out of a term for years; for as the grant is good for so many years as the term continues, *St. Auby's* case, Cro. Eliz. 183, it is in effect only a grant for years de-
*terminable on lives; and it is only a chattel, because a freehold cannot [*629]
issue out of a term for years. *Butt's* case, 7 Co. 25 a; *ante*, p. 621. And it has been held, if a man possessed of a lease for years grant a rent out of it generally, without limiting any estate, this shall be during all the term, and is not determinable by the death of the grantee. 1 Roll. Abr. 831, pl. 5; 10 Vin. Ab. 219, pl. 5. So, where a man possessed of a term for years determinable on lives, devised twenty pounds *per annum* to J. S., to be paid half yearly out of this estate, if the *cestui que vies* should so long live: J. S. dying in the life-time of the *cestui que vies*, and the question being, whether this rent should determine by his death, or go to the plaintiff, who was his executor, and be paid to him during the term? The Lord Chancellor decreed it for the plaintiff, the executor of J. S.; and said, if the rent would have continued as long as the term lasted, if J. S. had so long lived, why will it not last so long, though J. S. happened to die sooner: and he added, there is nothing said in the will to determine it. And the above case in Rolle's Abridgment, was looked upon as being an authority in point. *Gosley* v. *Gilford*, 2 Vern. 35.

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

GRANT *of a personal* ANNUITY *for the Life of the Grantor, in which* TWO SURETIES *join; with* COVENANT *for Payment by the Three;* DEFEAZANCE *on Judgment; and Power to* REPURCHASE.

THIS INDENTURE, made the —— day of ——, in the —— year of the reign, &c. and in the year of our Lord 18—; BETWEEN [*grantor*], of &c., [*surety*], of &c., and [*other surety*], of &c., of the one part; and [*grantee*], of &c., of the other. WHEREAS the said [*grantor*] hath agreed with the said [*grantee*] for the sale to him of an annuity or yearly sum of —— pounds, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during the natural life of him the said [*grantor*], at or for the price or sum of —— pounds. AND WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, it was agreed by and between the said [*grantee*] and [*grantor*], that for securing the payment thereof, the same should be secured by these presents, and also by the bond and warrant of attorney to confess judgment of the said [*grantor*] and [*surety*], and [*other surety*], who had agreed to join therein as sureties for the said [*grantor*], in securing the payment of the same annuity or yearly sum. [AND (*a*) WHEREAS upon the treaty for the purchase of the said annuity or yearly sum of —— pounds, it was likewise agreed, that all costs, charges, and expenses attending the said contract, and for prepar*ing and perfecting the several securities for the same, and for preparing and enrolling a memorial thereof, should be borne and paid by the said [*grantor*]]. AND WHEREAS in pursuance of the said

Parties.

Recital of contract for sale of annuity.

[*631]

Recital of bond

(*a*) *Vide ante*, p. 460, n. (*b*).

agreement, the said [*grantor*], [*surety*], and [*other surety*], by their bond or obligation in writing, bearing even date with these presents, and each and any two (*a*) of them, have and hath become jointly and severally bound unto the said [*grantee*], in the sum of [*double the purchase money*] pounds; *With* a condition thereunder written for making void the same, if the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or their, any, or either of their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of him the said [*grantor*], one annuity or yearly sum of —— pounds, of lawful money of Great Britain and Ireland, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, by even and equal portions, the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the said bond or obligation now in recital: *And also* if the heirs, executors, or administrators of the said [*grantor*], or the said [*surety*], and [*other surety*], or either of them, their or either of their heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*grantor*] should happen to depart this life on any day on which any quarterly payment of the said annuity or yearly sum of —— pounds should become due, the whole of such quarterly payment; And if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum of —— pounds should have become due, then a proportionable part of the quarterly payment of the said annuity or yearly sum of —— *pounds, to be computed from the day of the date of the above-written bond or obligation, to the day of the death of the said [*grantor*]; But in case any quarterly payment of the said annuity or yearly sum of —— pounds should have become due at the time of the decease of the said [*grantor*], then from such

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from three to one, for paying annuity.

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(*a*) *Vide ante*, p. 502, n. (*a*).

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of the said quarterly days of payment of the said annuity or yearly sum of —— pounds as should happen to be next and immediately preceding the day of the decease of the said [*grantor*], to the day of his decease. AND WHEREAS in further pursuance of the said agreement, the said [*grantor*], [*surety*], and [*other surety*], have executed a warrant of attorney, bearing even date with the said bond or obligation, and these presents, thereby authorizing and empowering certain attornies therein named to confess a judgment (*a*) against them in his Majesty's Court of (King's Bench, at Westminster), in an action of debt upon the said bond, for the said sum of [*double the purchase money*] and costs of suit; [As by the said bond or obligation and warrant of attorney, reference being thereunto respectively had, may more fully and at large appear.] NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and for and in consideration of the sum of —— pounds of lawful money of Great Britain and Ireland, by the said [*grantee*], in hand well and truly paid to the said [*grantor*], at or before the sealing and delivery of these presents, [in notes (*b*) of the Governor and Company of the Bank of England, payable to bearer on demand;] the receipt of which said sum of —— pounds, he the said [*grantor*] doth hereby admit and acknowledge, and of and from the same, and every part thereof, doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, and every of them by these presents: *And also* for and in consideration of the sum of ten shillings to each of them the said [*surety*], and [*other surety*], in hand well and truly paid by the said [*grantee*], at or before the sealing and delivery of these presents; the receipt whereof they the said [*surety*] *and [*other surety*] do, and each of them doth hereby acknowledge; THEY the said [*grantor*], [*surety*], and [*other surety*], *Have*, and each and every of them *hath* given, granted, bargained, sold, and confirmed; *And* by these presents *do*, and each and every of them *doth* give, grant, bargain, sell, and confirm unto the said [*grantee*], his ex-

Recital of warrant of attorney.

Testatum.

[*633]

Grant of annuity by three to one.

(*a*) *Vide* reasons for preparing several judgments to a joint judgment, Index to Vol. 5, title, "JUDGMENT."

(*b*) *Vide ante*, p. 460, n. (*a*).

ecutors, administrators, and assigns, for and during the natural life of him the said [*grantor*], ONE annuity or yearly sum of —— pounds of lawful money of Great Britain and Ireland: TO HAVE, hold, receive, take, and enjoy the said annuity or yearly sum of —— pounds, hereby given, granted, and confirmed, or intended so to be, and every part thereof, henceforth, for and during the natural life of him the said [*grantor*] (*c*), to be paid and payable unto the said [*grantee*], his executors, administrators, and assigns, by four equal quarterly payments in the year, that is to say, the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of these presents, without any deduction or abatement whatsoever thereout, or out of any part thereof, for or in respect of any taxes, charges, rates, assessments, or other impositions whatsoever, now or hereafter to be taxed, charged, rated, assessed, or imposed upon the said annuity or yearly sum of —— pounds, or any part thereof, or on the said [*grantor*], [*surety*], and [*other surety*], or any or either of them, or the said [*grantee*], his executors, administrators, or assigns, or any or either of them, in respect thereof, by authority of parliament, or otherwise howsoever; *Together* with a proportional part of the quarterly payment of the said annuity or yearly sum of —— pounds, for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the said [*grantor*], to the day of such his decease, as in the condition to the said hereinbefore in part recited bond or obli*gation is mentioned. AND THE SAID (*d*) [*grantor*], [*surety*], and [*other surety*], do here-

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Covenant to pay

(*c*) *Vide ante*, p. 628.

(*d*) If there be only one surety, the covenant may be—

"AND THE SAID [*grantor*] and [*surety*] do hereby for themselves, their heirs, executors, and administrators; *and* each of them doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns; that they the said [*grantor*] and [*surety*],

Covenant to pay annuity from two to one, jointly and severally.

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annuity from three to one jointly, and any two separate from the other jointly, and each of them separately.

by for themselves, their heirs, executors, and administrators, jointly; *and* any two (*e*) of them, separately and apart from the other of them, do hereby for themselves, their heirs, executors, and administrators, jointly; *and* each of them, separately and apart from the others and other of them, doth hereby for himself, his heirs, executors, and administrators, severally covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*], [*surety*], and [*other surety*], or some or one of them, or their, some, or one of their heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of the said [*grantor*], the said annuity or yearly sum of —— pounds, free and clear of and from all taxes, charges, rates, and other deductions whatsoever, parliamentary or otherwise, on the days and times, and in manner and form hereinbefore limited and appointed for the payment thereof, together with such proportional part thereof as aforesaid, as in the condition of the said hereinbefore recited bond or obligation is mentioned. AND *it is hereby agreed and declared*, that the judgment so to be entered up against the said [*grantor*], [*surety*], and [*other surety*], as aforesaid, is intended and shall be considered only as a further security to the said [*grantee*], his executors, administrators, and assigns, for the said *annuity or yearly sum of —— pounds; *And* that no execution or executions shall be issued or taken out upon the said judgment, unless and until the same annuity or yearly sum, or some part thereof, shall be in arrear or unpaid for the space of twenty-one days; *And* that in case, and when and so often as the said annuity or yearly sum, or any part thereof, shall be in arrear or unpaid for the space of twenty-one days next after any of the said days or times on which the same

Defeazance on judgment.

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or one of them, their or one of their heirs, executors, or administrators, shall and will, &c." *ut supra* †.

(*e*) *Vide ante*, p. 311, n. (*a*); p. 502, n. (*a*); *post*, Vol. 3, p. 182.

† See form of a bond from two to one, *ante*, p. 480.

ought to be paid as aforesaid, then, and so often, it shall and may be lawful for the said [*grantee*], his executors, administrators, or assigns, to sue out such execution or executions upon or by virtue of the said judgment, as he or they shall think fit, for the recovery of the arrears of the said annuity or yearly sum, and all expenses, if any, to be occasioned by the non-payment thereof; And that it shall not be necessary for the said [*grantee*], his executors, administrators, or assigns, to revive, or cause the said judgment to be revived, or to do any act, matter, or thing, to keep the same on foot, notwithstanding the said judgment shall have been entered on record for the space of one year or upwards; *and* notwithstanding any rule or practice of the said Court of King's Bench to the contrary: *And* that they the said [*grantor*], [*surety*], and [*other surety*], any or either of them, their, any, or either of their heirs, executors, administrators, or assigns, shall not, nor will have, take, receive, or attempt, by any ways or means, to have or receive any advantage for want of reviving or keeping the said judgment on foot. AND THE SAID [*grantee*] doth for himself, his heirs, executors, and administrators, covenant and agree with the said [*grantor*], [*surety*], and [*other surety*], and each and every of them, their and each and every of their heirs, executors, and administrators, that in case the said [*grantor*], [*surety*], and [*other surety*], any or either of them, or the heirs, executors, or administrators of either of them the said [*surety*] and [*other surety*], should be minded or desirous of repurchasing the said annuity or yearly sum of —— pounds; and of such their or his intention should give —— months' notice in writing unto the said [*grantee*], his executors, administrators, or assigns, then, and in such case, he *the said [*grantee*], his executors, administrators, or assigns, upon the expiration of the said —— months, for which such previous notice shall be so given as aforesaid, on receiving full payment of the said annuity or yearly sum of —— pounds, and all arrears thereof up to and including the day of repurchasing the same, together with a proportional part of the same annuity in case such repurchase should be made on any other day than one of the said quarterly days of payment,

GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

Power to repurchase, where there are two sureties.

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GRANT AND COVENANT, WITH TWO SURETIES; DEFEAZANCE, &c.

for the time which shall have elapsed from the then last preceding quarterly day of payment, up to and including the day of such repurchase; And all and every sums and sum of money, if any, which shall be then due for or on account of any expenses occasioned by the non-payment thereof, accept and take the sum of —— pounds, of lawful money of Great Britain and Ireland, in full, for the repurchase of the said annuity or yearly sum of —— pounds: *And* the said [*grantee*], his executors, administrators, and assigns, shall and will thereupon, at the costs and charges in the law of the person or persons requiring the same, release, assign, or otherwise dispose of the same annuity or yearly sum, and all the securities for the same, as the person or persons making such repurchase shall in that behalf direct or appoint. *(Add clause, that if repurchase be made by sureties, annuity shall continue for their benefit, subject to the like right of the grantor to repurchase, ut ante,* p. 483, 514*).* In witness, &c.

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GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

GRANT *of an* ANNUITY *to which a married Woman is entitled for Life under a Will, as a Security for an Annuity of less Amount granted by her Husband;* COVENANT *to levy a Fine* SUR CONCESSERUNT *for Life, of the Annuity; Power to* REPURCHASE, &c.

THIS INDENTURE, made the —— day of ——, in the —— year &c. *George* the *Fourth,* &c., and in the year of our Lord, 18—; BETWEEN [*grantor*], of &c., and [*Mary*] his wife, (formerly [——], widow and relict of [*testator*], late of &c., deceased) of the one part; and [*grantee*], of &c., of the other part. WHEREAS the said [*testator*], by his last will and testament in writing duly executed and attested for the devise of lands of inheritance, and bearing date on or about the —— day of ——, 18—, gave and devised to his brother [*devisee*], his heirs and assigns, all

Parties.

Recital of a will, whereby estates were devised, upon condition of the devisee paying devisor's wife an annuity, being the an-

his messuages, tenements, lands, and hereditaments, situate in the said county of ——, with their and every of their appurtenances, *Upon condition* nevertheless that he the said [*devisee*], his heirs or assigns, should well and truly pay or cause to be paid thereout unto his the said testator's wife the said [*Mary* (then *Mary* ——)] or her assigns, one annuity or clear yearly sum of [*sixty*] pounds for and during the term of her natural life, by four equal quarterly payments in the year, that is to say; on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first quarterly payment thereof to become due and be made on such one of the said days as should next happen after his the said testator's decease; such payments to be made clear of all taxes and deductions whatsoever, in lieu of all her dower and thirds in his real estates; being the annuity which *was charged by him upon the said hereditaments and premises, in and by an indenture bearing date the —— day of —— then last past. And whereas the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of an annuity or yearly sum of [*fifty*] pounds, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes and clear of all other deductions whatsoever for and during the life of the said [*wife*], and to be secured in manner hereinafter mentioned, at or for the price or sum of —— hundred and —— pounds. And whereas the said [*grantor*], by his bond or obligation in writing under his hand and seal, bearing even date with these presents, hath become bound unto the said [*grantee*] in the penal sum of [*double the purchase money*] pounds; with a *condition* thereunder written for making the same void, if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, for and during the natural life of the said [*Mary* ——], *One* annuity or yearly sum of [*fifty*] pounds, of lawful money of Great Britain, free from taxes, and clear of all other deductions whatsoever, on four days or times in the year, that is to say; the —— day of ——, the —— day of ——, the

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

nuity assigned by this deed.

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Recital of contract for purchase of annuity.

Recital of bond for

payment of annuity,

quarterly;

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

with proportional part.

—— day of ——, and the —— day of ——, in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the date of the same bond or obligation: *And also* if the said [*grantor*], his heirs, executors, or administrators, should well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, in case the said [*Mary* ——] should depart this life on any day on which any quarterly payment of the said annuity or yearly sum of [*fifty*] pounds should become due, the whole of such quarterly payment; *And* if on any other day, in case such day should happen before any quarterly payment of the said annuity or yearly sum should have become due, Then a proportional part of the quarterly payment of the said annuity or yearly sum of [*fifty*] pounds, to be computed from

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the day of the date of the same bond or obli*gation, to the day of the death of the said [*Mary* ——]; *But* in case any quarterly payment of such annuity or yearly sum of [*fifty*] pounds should have become due at the time of the decease of the said [*Mary* ——], then from such of the said quarterly days of payment of the said annuity or yearly sum of [*fifty*] pounds, as should happen to be next and immediately preceding the day of the death of the said [*Mary* ——], to the day of her decease.

Recital of warrant of attorney to confess judgment.

AND WHEREAS the said [*grantor*] hath executed a warrant of attorney, bearing even date with the said bond and these presents, thereby authorizing and empowering certain attornies therein named to confess a judgment against him in his Majesty's Court of ——, at Westminster, in an action of debt upon the said bond, at the suit of the said [*grantee*], his executors or administrators, for the sum of [*double the purchase money*] pounds, and costs of suit; *And* it is intended and agreed, that judgment shall be immediately entered thereupon accordingly.

Testatum.

Transfer of annuity given by will.

NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of —— hundred and —— pounds of lawful money of Great Britain, by the said [*grantee*] to the said [*grantor*], and [*Mary*] his wife, or one of them, well and truly paid at or immediately before the sealing and delivery

of these presents [in (*a*) notes of the Governor and Company of the Bank of England, expressed to be payable to bearer on demand]; the receipt and payment whereof they the said [*grantor*], and [*Mary*] his wife, do, and each of them doth hereby admit and acknowledge; and of and from the same, and every part thereof, do, and each of them doth hereby acquit, release, and discharge the said [*grantee*], his heirs, executors, administrators, and assigns, and every of them; THEY the said [*grantor*], and [*Mary*] his wife, *have*, and each of them *hath* granted, bargained, sold, and assigned; *And* by these presents *do*, and each of them *doth* grant, bargain, sell, and assign unto the said [*grantee*], his heirs and assigns, THE said annuity, yearly rent charge, or sum of [*sixty*] pounds, by the will of the said [*testator*] deceased, given and devised to the said [*Mary* ——], then [*Mary* ——], and her assigns, for her life, as hereinbefore is mentioned: *AND all remedies and powers whatsoever requisite or necessary for the recovery thereof, and the obtaining and getting in the same; AND all the estate, right, title, interest, property, claim, and demand whatsoever, of them the said [*grantor*], and [*Mary*] his wife, or either of them, of, in, to, or out of the same sum of [*sixty*] pounds, and every or any part thereof. TO HAVE, hold, receive, perceive, and take the said annual sum of [*sixty*] pounds, hereby assigned, or intended so to be, and all other the premises hereby granted, bargained, sold, and assigned, or expressed and intended so to be, with the appurtenances, unto the said [*grantee*], his heirs and assigns, for and during the natural life of the said [*Mary* ——]; *Upon the trusts* hereinafter mentioned of and concerning the same. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his heirs, executors, administrators, and assigns, that they the said [*grantor*], and [*Mary*] his wife, shall and will, at the request of the said [*grantee*], his executors, administrators, or assigns, but at the costs and charges of the said [*grantor*], as of this present Hilary term, or as of or in some subsequent term, ac-

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All remedies.

All the estate.

Habendum.

Covenant by husband, that he and his wife will levy a fine *sur concesserunt* of an annuity given by will.

(*a*) *Vide ante*, p. 460, n. (*a*).

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knowledge and levy in due form of law before his Majesty's Justices of the Court of Common Pleas at Westminster, unto the said [*grantee*], and his heirs, a fine *sur concesserunt* (*b*), according to the usual course, order, and manner of fines in like cases used and accustomed, of the said annuity, yearly rent charge, or sum of [*sixty* pounds, by such names and descriptions as shall be sufficient to comprise the same. Declaration of the uses of the fine. AND *it is hereby agreed and declared* by and between the said parties hereto, that the said fine so as aforesaid, or in any other manner, or at any other time or times, to be acknowledged and levied; and all and every other fines and fine whatsoever already acknowledged and levied, or hereafter to be acknowledged and levied, of the said annuity, yearly rent charge, or sum of [*sixty*] pounds, or any part thereof, by or between the said parties to these presents, or any of them, or whereunto they or any of them are or shall be parties or privies, party or privy, shall be and enure, and shall be adjudged, [*641] construed, deemed, and taken to be and *enure, *To the use* of the said [*grantee*], his heirs and assigns, during the life of the said [*Mary* ——]. Declaration that annuity assigned was upon trust, to secure the annuity granted. AND *it is hereby agreed and declared*, that the said [*grantee*], his heirs and assigns, shall stand seised and be possessed of the said annuity, yearly rent charge, or sum of [*sixty*] pounds, UPON TRUST, that he the said [*grantee*], his heirs and assigns, shall and do by, with, and out of the same, from time to time, retain and pay to himself and to his executors, administrators, and assigns, the annuity of [*fifty*] pounds, hereby and by the said bond or obligation secured, or intended so to be, and all costs, charges, and expenses occasioned by the non-payment thereof, or by the trusts hereby created, or any of them: *And* do and shall pay all the surplus and residue of the said annual sum of [*sixty*] pounds, which shall remain after or not be applied for or upon answering the trusts aforesaid, to such persons, and for such intents and purposes, as the said [*grantor*], and [*Mary*] his wife, shall by any deed or deeds, instrument or instruments in writing, with or without power of

Surplus of annuity assigned, to be paid as grantor and wife shall appoint.

(*b*) Proclamations are not made on a fine *sur concessit.* Wilson on Fines, 43, 4th ed.; *et vide ante*, p. 251, n. (*c*).

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revocation, to be by them sealed and delivered in the presence of, and to be attested by two or more credible witnesses, from time to time direct or appoint; *And*, in default of such direction and appointment, do and shall pay the surplus or residue of the said annual sum of [*sixty*] pounds to, or permit the same to be received by the said [*Mary* ——], and her assigns, during the term of her natural life. AND THE SAID [*grantor*] doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that they the said [*grantor*], and [*Mary*] his wife, or one of them, their, or one of their heirs, executors, or administrators, shall and will well and truly pay, or cause to be paid unto the said [*grantee*], his executors, administrators, and assigns, the said annuity of [*fifty*] pounds, in the shares and proportions, and on the days or times in the said bond or obligation, and hereinbefore, mentioned for payment thereof: AND ALSO that she the said [*Mary* ——] shall and will once a-year, or oftener if it should be thought necessary, upon the request of the said [*grantee*], his executors, administrators, and assigns, but at the costs and charges of them the said [*grantor*], and [*Mary*] his wife, or one of *them, appear in person at some insurance office in London or Westminster, to be for that purpose appointed by the said [*grantee*], his executors, administrators, or assigns, or otherwise send the said [*grantee*], his executors, administrators, or assigns, notice of her place of abode, and such vouchers as the office may require, respecting her state of health, from time to time; in order to enable him the said [*grantee*], his executors, administrators, and assigns, to insure the life of her the said [*Mary* ——], at such insurance office; *And also* that the said [*Mary* ——] shall and will thereupon answer such questions, and otherwise act and demean herself therein, as may be necessary to enable the said [*grantee*], his executors, administrators, or assigns, to effectuate such insurance. AND THE SAID [*grantor*] doth hereby for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said [*grantee*], his heirs, executors, administrators, and assigns, that the said annuity, yearly rent charge, or sum

In default of appointment, to grantor's wife for life.

Covenant to pay the annuity granted.

Covenant by the grantor, that his wife shall appear at insurance office, &c. in order that grantee might insure her life.

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Covenant that assigned annuity is subsisting;

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of [*sixty*] pounds, is good and subsisting, and is not in anywise revoked, determined, or made void; AND ALSO that he the said [*grantor*], and [*Mary*] his wife, have not, nor hath either of them, at any time heretofore, assigned, charged, or incumbered the said annuity, yearly rent charge, or sum of [*sixty*] pounds, or released or discharged the same, or any part thereof: AND that they the said [*grantor*], and [*Mary*] his wife, have, or one of them hath, good right and lawful authority to assign, or otherwise assure the said annuity of [*sixty*] pounds, and other the premises hereby assigned, or otherwise assured, or intended so to be, with the appurtenances, unto the said [*grantee*], his heirs and assigns, upon the trusts and in manner aforesaid, and according to the true intent and meaning of these presents: AND FURTHER, that they the said [*grantor*], and [*Mary*] his wife, and each of them, shall and will, from time to time, and at all times hereafter during the life of the said [*Mary* ——], upon the reasonable request, and at the costs and charges of the said [*grantee*], his heirs, executors, administrators, or assigns, make, do, and execute, or cause and procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, deeds, assignments, letters of attorney, and other assurances in the law whatsoever, for the further, better, more perfectly, and absolutely *assigning and assuring the said annuity, yearly rent charge, or sum of [*sixty*] pounds, and other the premises hereby assigned, or otherwise assured, or intended so to be, and every part thereof, unto the said [*grantee*], his heirs, executors, administrators, or assigns, or for better enabling him or them to recover and receive the same, upon the trusts hereinbefore declared, and according to the true intent and meaning of these presents; *As* by the said [*grantee*], his heirs, executors, administrators, or assigns, or his or their counsel in the law, shall be reasonably devised, or advised and required. AND THE SAID [*grantee*], for himself, his heirs, executors, administrators, and assigns, doth hereby covenant, promise, and agree with and to the said [*grantor*], and [*Mary*] his wife, their executors, administrators, and assigns, that in case they the said [*grantor*], and [*Mary*] his wife, or either of them, or the executors, administrators, or assigns of the said

that grantor and his wife have not incumbered.

For title.

For further assurance.

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Power to repurchase the annuity granted.

GRANT OF ONE ANNUITY TO SECURE ANOTHER; COVENANT TO LEVY A FINE SUR CONCESSERUNT, &c.

[*grantor*], should at any time or times hereafter be desirous of repurchasing the said annuity or yearly sum of [*fifty*] pounds, and should give notice in writing unto the said [*grantee*], his heirs, executors, administrators, and assigns, of such their, his, or her intention, then and in such case the said [*grantee*], his heirs, executors, administrators, or assigns, shall and will, at the end of three calendar months from the time at which such notice shall be given as aforesaid, on receiving of and from the said [*grantor*] and [*Mary*] his wife, or either of them, their or either of their executors, administrators, or assigns, the said sum of —— hundred and —— pounds; and all and every sums and sum of money whatsoever, which shall be then due for or on account of the arrears of the said annuity or yearly sum of [*fifty*] pounds up to the day of repurchasing the same, and all sum and sums of money (if any) which shall be then due for or on account of any costs, charges, and expenses occasioned by the non-payment of the said annuity or yearly sum of [*fifty*] pounds; and also an advance of one quarterly payment of the said annuity or yearly sum of [*fifty*] pounds, at the request, and at the proper costs and charges in the law of the person or persons requiring the same, release, assign, or otherwise dispose of the said annuity or yearly sum of [*fifty*] pounds, and also the said annuity, yearly rent charge, or sum of [*sixty*] *pounds, and all other the securities for the said annuity or yearly sum of [*fifty*] pounds hereby granted, or expressed and intended so to be, unto the persons or person repurchasing the same, or as they, he, or she shall in that behalf nominate and appoint: And also shall and will acknowledge or cause to be acknowledged satisfaction upon the record of the judgment so to be entered up as aforesaid; and do every other act, deed, matter, and thing necessary or advisable for the avoiding, releasing, assigning, vacating, or discharging as well the said annuity or yearly sum of [*fifty*] pounds as the said several securities given for securing the payment thereof as aforesaid; *As* by the persons or person repurchasing the same, their, his, or her counsel in the law, shall be reasonably advised or devised. (*Add defeazance on judgment, ut ante*, p. 531). In witness, &c.

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GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

GRANT *of* ADDITIONAL ANNUITY *for the Lives of* TWO NOMINEES, *by Indorsement on the original Grant; charged on a* LEASEHOLD *Estate thereby assigned to Trustees, upon Trusts for securing the original Annuity; and to be secured by the same Powers and Remedies as are thereby given to Trustees for securing the original Annuity: with additional Power of Distress; Covenants to join in Conveyances to Purchasers, and for Insurance against Fire: Declaration that the Judgment to be entered on the original Warrant of Attorney, is to be a Security for additional Annuity; with Power to sue out Execution on Judgment, after Default in paying additional Annuity; and Agreement as to Reviver of Judgment; Power to repurchase; and Power for Trustees to reimburse themselves.*

THIS INDENTURE, made the —— day of ——, [*645] in the —— year &c. *George* the *Fourth* &c., and in *the year of our Lord 18—; BETWEEN the within-named [*grantor*], of the one part, and the within-named [*grantee*], of the other part. WHEREAS the said [*grantee*] hath contracted and agreed with the said [*grantor*], for the purchase of an annuity or yearly sum of —— pounds, payable during the lives of the within-named [*two nominees*], and during the life of the longest liver of them, at or for the price or sum of —— pounds. AND WHEREAS upon the treaty for the purchase of the said annuity, it was agreed that the same should be charged upon the pieces or parcels of ground, messuages or tenements, and premises (*a*) within mentioned and described; *And* that

Parties.

Recital of contract for purchasing additional annuity;

to be charged on premises charged with original annuity;

and further secured by judg-

The word *here-*

(*a*) The property being leasehold, the word *hereditaments* instead of

the same annuity should be further secured by the judgment to be entered up upon the within-recited warrant of attorney. NOW THIS INDENTURE WITNESSETH that for and in consideration of the sum of —— hundred pounds of lawful money of Great Britain [in notes (*b*) of the Governor and Company of the Bank of England, payable to the bearer on demand], paid by the said [*grantee*] to the said [*grantor*], on the —— day of —— now last past; the receipt whereof he the said [*grantor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth hereby acquit, release, and discharge the said [*grantee*], his executors, administrators, and assigns; HE the said [*grantor*] hath granted and confirmed, and by these presents doth grant and confirm, unto the said [*grantee*], his executors, administrators, and assigns (*c*), an annuity or yearly sum of —— pounds of lawful money of Great Britain and Ireland, as the same is current in England, to be paid and payable during the natural lives of the said [*two nominees*], and during the *life of the longest liver of them; and to be charged and chargeable upon, and issuing and payable out of the pieces or parcels of ground, messuages or tenements, and premises, mentioned and described in the within-written indenture; and to be paid and payable to the said [*grantee*], his executors, administrators, and assigns, in the common dining hall of Lincoln's Inn, in the county of Middlesex, by two equal half-yearly payments in the year, that is to say; on the —— day of ——, and the —— day of ——, in each and every year, by even and equal portions, the first payment thereof to begin and be made on the —— day of ——

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

ment on original warrant of attorney.

Testatum.

Consideration previously paid.

Grant of additional annuity;

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charged on premises within-mentioned;

and payable half yearly.

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premises would not be technically correct: because the word *hereditament*, in the most usual and proper sense, is applied only when the estate therein is of freehold or inheritance, and which not being devised descends to the *heir;* and is not applied to a chattel interest, for that vests in the executor or administrator. Noy's Tenures, 54, 6th ed. 356; Cowel's Interpreter, tit. *Hereditaments.* [*Sed vide contrà*, Prest. Shepp. Touchst. 74.]

ditament is not applied to a chattel interest.

(*b*) *Vide ante*, p. 460, n. (*a*).

(*c*) As this annuity is charged on a leasehold estate, there does not appear to be any objection to the grant of it to executors and administrators *pur. autre vie.* *Vide ante*, p. 628.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

next ensuing the date hereof; *Aogether* with a proportional part of the said annuity or yearly sum of —— pounds, up to and including the day of the death of the longest liver of them the said [*two nominees*]; such proportional part to be paid and payable immediately after the decease of such longest liver. To HOLD, receive, perceive, and take the said annuity or yearly sum of —— pounds, and every part thereof, unto the said [*grantee*], his executors, administrators, and assigns, for and during the natural lives of the said [*two nominees*], and during the life of the longest liver of them, free from all taxes, deductions, and abatements thereout whatsoever. AND for the better and more effectually securing the due payment of the said annuity or yearly sum of —— pounds, *he* the said [*grantor*] *doth* give and grant unto the said [*grantee*], his executors, administrators, and assigns, full power and authority, when and so often as the said annuity or yearly sum of —— pounds, or any part thereof, shall be in arrear and unpaid by the space of fourteen days next after any of the said days or times appointed for payment thereof, to enter into and upon the pieces of ground, messuages or tenements, and premises within mentioned and described, or into and upon any part thereof, and there to take and distrain any goods, chattels, and effects which may be found thereon; and in making any such distress or distresses, to act therein in all respects as landlords are entitled to do in making distresses for rent in arrear; To the intent that by such distress or distresses, or otherwise, all arrears of the said annuity or yearly sum of —— pounds, and all costs, charges, damages, and *expenses, which the said [*grantee*], his executors, administrators, or assigns, may sustain, or be put unto, by reason of the nonpayment of the said annuity or yearly sum, or any part thereof, on the days or times appointed for payment of the same, and also all expenses attending the making of any such distress or distresses, may be fully paid and satisfied. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, or some or one of them, shall and will

Habendum.

Power of distress.

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Covenant to pay annuity.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

from time to time, and at all times hereafter, during the lives of the said [*two nominees*], and during the life of the longest liver of them, well and truly pay, or cause to be paid, unto the said [*grantee*], his executors, administrators, or assigns, the said annuity or yearly sum of —— pounds, on the days or times hereby appointed for payment thereof, without making any deduction or abatement thereout whatsoever. AND *it is hereby declared and agreed*, by and between the parties hereto, that the within-named [*two trustees*], or the survivor of them, his executors and administrators, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall stand and be possessed of the pieces or parcels of ground, messuages or tenements, and premises within mentioned and described, with their and every of their appurtenances, as well for the purpose of securing the payment of the said annuity or yearly sum of —— pounds hereby granted, as for securing the payment of the within-mentioned annuity or yearly sum of —— hundred and —— pounds. AND *it is also agreed*, that for the purpose of securing the payment of the said annuity or yearly sum of —— pounds, the said [*two trustees*], and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts of the within-written indenture, shall in all respects have such and the same powers and authorities as are given to them by the within-written indenture, for the purpose of securing the within-mentioned annuity or yearly sum of —— hundred and —— pounds, any thing in the within-written indenture contained to the *contrary thereof notwithstanding. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that in case any sale should be made of the pieces or parcels of ground, messuages or tenements, and premises within mentioned and described, or of any part or parcel thereof, for the purpose of providing for the payment of the said annuity or yearly sum of —— pounds, that then, and in such case, he the said [*grantor*], his executors, administrators, or assigns, shall and will, if requested,

Trustees to stand possessed of premises upon trust to secure additional annuity;

and to have same powers for securing additional annuity as they have for securing original annuity.

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Covenant by grantor to join in conveyances to purchasers, and enter into usual covenants with them;

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join and concur in the making thereof, and in executing the assignments and assurances of the premises which may be so sold to the purchaser or purchasers thereof, and enter into all usual and reasonable covenants with such purchaser or purchasers, his, her, or their executors, administrators, and assigns, for the estate, title, possession, and further assurance of the premises which may be so sold, and do all other reasonable acts for confirming such sale or sales: NEVERTHELESS (*c*) *it is hereby declared*, that the concurrence of the said [*grantor*], his executors, administrators, or assigns, in any such sale or sales, assignments or assurances, shall not in anywise be deemed or considered as essential or necessary to perfect the title of such purchaser or purchasers; the same being only intended for his, her, or their more perfect satisfaction. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby further covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, from time to time, and at all times hereafter, so long as the said annuity or yearly sum of —— pounds shall remain payable, insure and keep insured, in some good public fire insurance office in London or Westminster, upon the messuages or tenements, and buildings within mentioned and described, the sum of —— pounds over and above the within-mentioned sum of —— hundred pounds, within agreed to be insured thereon, so long as the within-mentioned annuity of —— hundred and —— *pounds continues payable: AND that he the said [*grantor*], his executors, administrators, or assigns, at his or their own expense, shall and will, immediately upon the making and renewing of every policy of such insurance, assign the same and the benefit thereof (*d*) unto the said [*grantee*], his executors, administrators, or assigns: PRO-

but such concurrence not to be considered as necessary to perfect the title.

Covenant to insure buildings from fire in an additional sum;

and to assign policies to grantee.

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(*c*) *Vide ante*, p. 569—573.

It seems preferable for grantor to effect insurance in grantee's name.

(*d*) To prevent the trouble and expense of assigning the policy of insurance, it seems to be advisable for the grantor to covenant to effect the insurance in the name of the grantee, his executors, administrators, and assigns, as in the form, Vol. 2, p. 39.

VIDED ALWAYS, *and it is hereby declared and agreed*, that if the said [*grantor*], his heirs, executors, or administrators, should at any time during the continuance of the said annuity or yearly sum of —— pounds, refuse or neglect to insure the said sum of —— pounds (over and above the said sum of —— hundred pounds, so long as the said annuity of —— hundred and —— pounds continues payable) or to make such assignments (*d*) of the policy or policies so to be made and taken as aforesaid; then and so often it shall and may be lawful for the said [*grantee*], his executors, administrators, and assigns, in like manner to insure the said sum of —— pounds, or any less sum, (over and above the said sum of —— hundred pounds, so long as the said annuity or yearly sum of —— hundred and —— pounds shall continue payable), and for such length of time as he or they shall think proper: AND *it is hereby declared and agreed*, that all sums of money which shall be recoverable on any such policy of insurance as aforesaid, shall forthwith be laid out and expended in rebuilding or repairing the premises insured, or such of them as may be destroyed or injured by fire, in order the better to secure the due payment of the said annuity or yearly sum of —— pounds. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant and agree with the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will, upon demand in writing left at his or their usual place or places of abode, pay and satisfy unto the said [*grantee*], his executors, administrators, or assigns, the premiums, costs, and charges which he the said [*grantee*], his executors, *administrators, or assigns, or any of them, shall expend or be put unto in or about the making or effecting of any such insurance as aforesaid, or in or about the receiving or recovering of the money thereby recoverable. AND *it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should make default in payment of such last-mentioned costs, charges, and expenses, by the space of fourteen days next after any

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

If grantor neglect, grantee may insure.

Monies to be received under policies to be expended in rebuilding premises.

Covenant by grantor to repay sums paid by grantee for insurance.

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Power to grantor to recover sums paid for insurance by distress, &c.

(*d*) *Vide* preceding note.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

such demand shall be made as aforesaid, then and in every such case the same, with interest thereupon after the rate of five pounds *per centum per annum*, from the respective times at which the said [*grantee*], his executors, administrators, or assigns, or any of them, shall pay or expend the same, shall be levied and raised, either by distress, or in such other way as is hereinbefore mentioned or referred to, with respect to the arrears of the said annuity or yearly sum of —— pounds, any thing hereinbefore contained to the contrary thereof notwithstanding (*x*). And *it is hereby declared and agreed* by and between the parties hereto, that the judgment to be entered up upon the within-recited warrant of attorney, shall be considered as a security as well for the payment of the said annuity or yearly sum of —— pounds hereby granted, as for the payment of the within-mentioned annuity or yearly sum of —— hundred and —— pounds, any thing contained in the within-written indenture to the contrary notwithstanding. And *it is also agreed*, that when and so often as the said annuity or yearly sum of —— pounds, or any part thereof, shall be in arrear and unpaid by the space of twenty-one days next after any of the days or times appointed for payment thereof, then and in every such case it shall be lawful for the said [*grantee*], his executors, administrators, and assigns, to sue out such execution or executions upon the said judgment, as he or they shall think fit or be advised, for the recovery of the arrears of the said annuity or yearly sum of —— pounds, and all costs, charges, and expenses which he the said [*grantee*], his executors, administrators, or assigns, or any of them, shall sustain or be put unto by reason or in consequence of the non-payment thereof. And *it is also agreed*, that it shall not be ne-

Judgment to be entered on original warrant of attorney, to be a further security for additional annuity.

Power to sue out execution on judgment after default in paying additional annuity.

Without reviving judgment.

[(*x*) "Provided nevertheless that the total amount of the principal monies to be recoverable by virtue of the power lastly hereinbefore contained, shall not exceed the sum of 200*l.*"

As to the necessity of a limitation of this nature, *vide post*, Vol. 5, p. 244. An *ad valorem* duty, applicable to a mortgage for 200*l.*, should be affixed to the deed, in addition to the stamp for the grant of an annuity.]

cessary to revive or cause the said judgment to be revived, or to do any act, matter, or thing to keep the same *on foot, notwithstanding the same shall have been entered on record for the space of one year or upwards, and notwithstanding any rule or practice of the court in which the said judgment shall be entered on record to the contrary. PROVIDED ALWAYS, *and it is hereby declared and agreed*, that in case the said [*grantor*], his heirs, executors, or administrators, should at any time hereafter be minded and desirous of repurchasing the said annuity or yearly sum of —— pounds, and of such his or their intention should give unto the said [*grantee*], his executors, administrators, or assigns, notice in writing, by the space of six calendar months, or leave the same at his or their usual place or places of abode, then and in such case the said [*grantee*], his executors, administrators, or assigns, shall and will, at the expiration of the said period of six calendar months, on receiving all sums of money which shall be due for arrears of the said annuity, together with a proportional part of the same annuity, from the last day of payment next preceding such repurchase up to and including the day of repurchasing the same, accept and take the sum of —— pounds in full for the repurchase of the said annuity or yearly sum of —— pounds: *And* on receipt of the said sum of —— pounds, and all arrears of the said annuity, and such proportional part thereof as aforesaid, the said annuity or yearly sum of —— pounds, and every part thereof, and all powers and authorities herein contained for enforcing the payment thereof, shall cease, determine, and be absolutely void, any thing herein contained to the contrary thereof notwithstanding. AND *it is hereby declared and agreed*, that the said [*two trustees*], and the survivor of them, and the executors and administrators of such survivor, and the trustees and trustee for the time being acting in the trusts hereof, shall and may out of the said trust monies, and premises, reimburse themselves and himself respectively, all such costs, charges, and expenses, as they or he may be put unto in the execution of the trusts hereby created. IN WITNESS, &c.

GRANT OF ADDITIONAL ANNUITY BY INDORSEMENT.

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Power to repurchase.

Power to trustees to reimburse themselves all expenses.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

GRANT *by* APPOINTMENT *under the usual Limitation to prevent Dower, and* RELEASE *in Fee by the Grantor and his Trustee to prevent Dower,* TO THE USE *that the Grantee, his Executors, Administrators, and Assigns, may receive an* ANNUITY *for the Lives of Three Nominees, or for Ninety-nine Years, if Three Nominees should so long live; with Powers of* DISTRESS *and* ENTRY *by way of Use;* TRUSTS FOR SALE; DEFEAZANCE *on the Judgment to be entered under a Warrant of Attorney to confess Judgment on the Annuity Bond; and Power to* REPURCHASE.

THIS INDENTURE, made the —— day of ——, [*in* the —— year of the reign &c. *George* the *Fourth*, &c. and] in the year of our Lord 18—; BETWEEN [*grantor*], of &c., of the first part; [*trustee to prevent dower*], of &c., of the second part; [*grantee*], of &c., of the third part; and [*trustee for sale, &c.*], of &c., of the fourth part. WHEREAS by indenture of lease and indenture of appointment and release (*or* indentures of lease and release), bearing date respectively on or about the —— and —— days of ——, 18—, the indenture of (appointment and) release being made between [*vendor*], of &c., of the first part; ([*vendor's trustee to prevent dower*], of &c., of the second part;) the said [*grantor*], of the third part; and the said [*trustee to prevent dower*], of the fourth part; the several messuages, tenements, lands, hereditaments, and premises hereinafter particularly mentioned and intended to be hereby appointed, granted, and released, with their appurtenances, were (appointed,) conveyed or assured, and now stand limited *To the use* of such person or persons, *for such estate or estates, absolute or conditional, and with or without power of revocation and new appointment, and

Parties.

Recital of lease and appointment, and release to uses to prevent dower.

[*653]

with, under, and subject to such powers, provisoes, conditions, and declarations, and for such intents and purposes, and in such manner in all respects as the said [*grantor*], by any deed or deeds, writing or writings, to be sealed and delivered by him, in the presence of, and to be attested by, two or more credible witnesses, or otherwise as in the same indenture of (appointment and) release is mentioned, shall direct, limit, or appoint the same: *And* in default of such direction, limitation, or appointment, and in the mean time subject thereto, *To the use* of the said [*grantor*] and his assigns for his life [without impeachment of waste]; with remainder, *To the use* of the said [*trustee to prevent dower*] and his heirs, during the life of the said [*grantor*], *In trust* for him the said [*grantor*] and his assigns, during his life; with remainder, *To the use* of the said [*grantor*], his heirs and assigns for ever. And whereas the said [*grantee*] hath contracted and agreed with the said [*grantor*] for the purchase of one annuity or yearly rent charge or sum of —— pounds, of lawful money of Great Britain, to be paid to the said [*grantee*], his executors, administrators, and assigns, free from taxes, and clear of all other deductions whatsoever, for and during (*a*) the natural lives of [*three nominees*], of &c., and the lives and life of the survivors and survivor of them: *And* upon the treaty for the sale of the said annuity of —— pounds, it was agreed that the same should be secured by the bond or obligation of the said [*grantor*], and a warrant of attorney for entering up a judgment thereon; and also by the covenant of the said [*grantor*], for payment of the same *as hereinafter contained: *And also* that the same annuity should be further secured by conveying

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

Recital of contract for purchase of annuity for three lives;

to be secured by bond, warrant of attorney, covenant, and conveyance, upon trusts for sale, &c.

[*654]

(*a*) As the form in the above precedent is still frequently used, it has been retained: but to avoid the question, stated *ante*, p. 587—596, whether a rent *pur autre vie* out of a freehold estate, can be effectually limited to the grantee, his executors, administrators, and assigns; it seems preferable to limit the annuity or rent charge,

" for and during the term of ninety-nine years, if [*three nominees*], of &c., any or either of them, should so long live; *And* upon the treaty, &c." *ut supra.*

To avoid the question, whether a rent *pur autre vie* can be limited to personal representatives, it seems preferable to grant it FOR YEARS, DETERMINABLE ON LIVES.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

the said several messuages, tenements, lands, hereditaments, and premises, to the uses, upon the trusts, and to and for the intents and purposes hereinafter mentioned, expressed, and declared of and concerning the same: *And also* that the said annuity of —— pounds might be repurchased upon the terms expressed in the agreement hereinafter inserted in that behalf: *And* (*b*) it was also agreed that the costs and charges of preparing and perfecting the several securities for payment of the said annuity, and of preparing and filing the memorial thereof, should be borne and paid by the said [*grantor*]. (*Recite bond* (*c*) *and warrant of attorney, ut ante*, p. 548, 549.) NOW THIS INDENTURE WITNESSETH, that for and in consideration of the sum of —— hundred pounds of lawful money of Great Britain, to the said [*grantor*] in hand well and truly paid by the said [*grantee*], [in notes (*d*) of the Governor and Company of the Bank of England, payable to bearer on demand] at or before the sealing and delivery of these presents; the receipt and payment of which said sum of —— hundred pounds, he the said [*grantor*] doth hereby acknowledge, and of and from the same, and every part thereof, doth acquit, release, and for ever discharge the said [*grantee*], his executors, administrators, and assigns, by these presents: *He* the said [*grantor*], in pursuance of the power or authority given, limited, or reserved to him in or by the said recited indenture of (appointment and) release, and by force and virtue thereof, and of every other power or authority to him given, limited, or reserved, in him vested, or in anywise enabling him in this behalf, *doth* by this deed or instrument in writing, sealed and delivered by him the said [*grantor*], in the presence of, and to be attested by, the two credible persons, whose names are intended to be hereupon indorsed as witnesses attesting the sealing and

to be repurchasable:

costs to be paid by grantee.

Recital of bond and warrant of attorney.

Testatum.

Appointment.

(*b*) *Vide ante*, p. 460, n. (*b*).

(*c*) If for years determinable on lives, say—

FOR YEARS, DETERMINABLE ON LIVES.

"for and during the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, *One* annuity, &c." *ut ante*, p. 499, *mutatis mutandis*.

(*d*) *Vide ante*, p. 460, n. (*a*).

delivery of these presents by him the said [*grantor*], direct, limit, and appoint, That the said several messuages, tenements, lands, hereditaments, and premises comprised in the said indenture of (appointment and) release, with their and every of their rights, members, and appurtenances, shall henceforth remain, continue, and be, *To the uses*, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared of and concerning the same. AND THIS INDENTURE FURTHER WITNESSETH, that for the consideration aforesaid, and also in consideration of the sum of ten shillings of lawful money of Great Britain, by the said [*trustee for sale, &c.*] to the said [*grantor*] and [*trustee to prevent dower*], in hand paid at or immediately before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he the said [*trustee to prevent dower*], by way of further assurance, at the request and by the direction of the said [*grantor*], and at the nomination and appointment of the said [*grantee*], testified by their severally executing these presents, *hath* bargained, sold, and released; and by these presents, *doth* bargain, sell, and release; *And* the said [*grantor*], by way of further assurance, at the nomination and appointment of the said [*grantee*], testified as aforesaid, *hath* granted, bargained, sold, released, ratified, and confirmed; and by these presents *doth* grant, bargain, sell, release, ratify, and confirm unto the said [*trustee for sale, &c.*] (in his actual possession now being by virtue of a bargain and sale to him thereof made by the said [*grantor*] and [*trustee to prevent dower*], in consideration of five shillings each, by indenture, bearing date the day next before the day of the date, and executed before the execution, of these presents, for the term of one whole year, commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to his heirs (*e*); ALL THOSE several messuages, tenements,

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

To the uses, upon the trusts, &c. after mentioned.

Release by trustee to prevent dower and grantor.

Reference to lease for a year.

Parcels.

(*e*) When uses are to be declared on the seisin of a releasee or feoffee, the conveyance should be to him and his *heirs*, and not to him, his

A conveyance to uses should be made to the

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

lands, hereditaments, and premises, commonly called or known by the name of ——, and containing by estimation —— acres, be the same more or less: *And also* all other the hereditaments, if any, comprised in and conveyed by the said hereinbefore in part recited indenture of lease and indenture of appointment and release (*or* indentures of lease and release), bearing date respectively on or about the —— and —— days of —— 18—, or intended so to be: *All* which said several messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned and described, are situate, lying, and being in the parish of ——, in the county of ——. [And all houses, outhouses, buildings, barns, stables, sheds, yards, gardens, orchards, hedges, ditches, mounds, fences, drains, ways, paths, passages, waters, watercourses, trees, woods, underwoods, and the ground and soil thereof, wastes, commons, common of pasture and turbary, lights, liberties, easements, profits, privileges, commodities, advantages, emoluments, hereditaments, rights, members, and appurtenances whatsoever, to the said several messuages, tenements, lands, hereditaments, and premises, or any of them, or any part or parcel thereof, belonging or in any wise appertaining or therewith now usually had, held, used, occupied, letten, possessed or enjoyed, or accepted, reputed, deemed, taken, or known as part, parcel, or member thereof, or of any part thereof. And the reversion and reversions, remainder and remainders, yearly and other rents, issues, and profits of the same messuages and hereditaments, and every part and parcel thereof. And all the estate, right, title, interest, use, trust, possession, inheritance, benefit, property, claim, and demand whatsoever, both at law and in equity, of them the said [*grantor*] and [*trustee to prevent dower*], and each of them, of, in, to, or out of the said messuages, tenements, lands, hereditaments, and premises hereby granted and released, or intended so to be, and every or

And all other hereditaments comprised in lease, appointment, and release.

General words for farms.

And the reversion, &c.

All the estate, &c.

releasee and his heirs, omitting assigns.

heirs and assigns; for as he is only a conduit-pipe, through whom the uses are to arise, his momentary seisin is not capable of being assigned; and therefore the word *assigns* is incorrect and useless. Sug. n. Gilb. Uses, 185; Noy's Maxims, p. 305, 9th ed.

any part thereof respectively. And also all deeds, evidences, and writings, touching and concerning the said hereditaments and premises, and every or any part thereof, now in the custody or power of the said [*grantor*] and [*trustee to prevent dower*], or either of them, or which they or either of them can or may obtain or procure, without suit at law or in equity. To have and to hold the said several messuages, tenements, lands, hereditaments, and all and singular other the premises hereby granted and released, or intended so to be, and every part and parcel thereof, with their and every of their appurtenances, unto the said [*trustee for sale, &c.*], and his heirs; To the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore referred to, and hereinafter mentioned, expressed, and declared, of and concerning the same; that is to say, To the use, intent, and purpose, that the said [*grantee*], his executors, administrators, and assigns, shall and may henceforth, for and during the (*f*) natural lives of them the said [*three nominees*], and the lives and life of the survivors and survivor of them, and up to the day of the decease of such survivor, have, receive, and take by and out of the rents, issues, and profits of the said messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned, and hereby appointed, granted, and released, or intended so to be, *One* annuity, yearly rent-charge, or sum of —— pounds of lawful money of Great Britain, free and clear of and from all taxes, charges, and deductions whatsoever, as well parliamentary or otherwise, for or in respect of any matter, cause, or thing whatsoever, now taxed, charged, assessed, or imposed, or hereafter to be taxed, charged, assessed, or imposed upon the said hereditaments and premises, or any part thereof, or upon the said [*grantee*], his executors, administrators, or assigns, for or on account of such annuity, yearly rent charge, or sum of —— pounds: **The*

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

All deeds, &c.

Habendum to trustee to the uses, &c. after mentioned, viz.

To the intent that grantee may receive an annuity for the lives of three nominees, clear of taxes, &c.

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(*f*) If it be for years determinable on lives, say—

" the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, have, receive, &c." *ut supra.*

FOR YEARS, DETERMINABLE ON LIVES.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

said annuity, yearly rent charge, or sum of —— pounds, to be paid and payable quarterly to him the said [*grantee*], his executors, administrators, or assigns, at or in the common dining hall of Lincoln's Inn, in the county of Middlesex, by four equal quarterly payments in the year; that is to say, the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, by even and equal portions; the first payment thereof to begin and be made on the —— day of —— next ensuing the day of the date of these presents; together with a proportional part of the same annuity, yearly rent charge, or sum of —— pounds, for the time which shall elapse between the last of the said days of payment preceding the day of the decease of the survivor of them the said [*nominees*], and the day of such survivor's decease; as in the condition to the said hereinbefore in part recited bond or obligation is mentioned. AND (*g*) TO THIS FURTHER USE, intent, and purpose, that if any quarterly payment of the said annuity, yearly rent charge, or sum of —— pounds, or any part thereof, should be behind and unpaid by the space of fourteen days next over or after any or either of the said days of payment, whereon the same is hereinbefore appointed to be paid as aforesaid; then and in such case, and as often as it shall so happen, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, and every of them, or any part thereof, to enter and distrain for the same annuity, yearly rent charge, or sum of —— pounds, and all arrears thereof; and the distress and distresses then and there found, to take, lead, drive, carry away, and impound; and the same in pound to detain and keep, until the said annuity, yearly rent charge, or sum of —— pounds, and all arrears thereof, and all costs, charges, and expenses whatsoever sustained or occasioned

payable quarterly,

with a proportional part to death of the survivor.

Power of distress by way of use.

Power of distress unnecessary, when a rent is created by way of use.

(*g*) As this deed is within the 27 Henry 8, c. 10, s. 4, *ante*, p. 603, the express declaration of use, giving a power of distress, is not necessary, although it is usually made in similar instances.

by or attending the making, taking, and keeping such distress then and there found, shall be fully paid and satisfied: And in default of payment thereof in due time after such distress shall be made and taken, to appraise, sell, or otherwise to act therein according to due course of law, in the same manner in all respects as landlords are by act of parliament authorized to do in respect to distresses for arrears of rent upon leases for years; to the intent that thereby and therewith the said [*grantee*], his executors, administrators, and assigns, shall and may be fully paid and satisfied the said annuity, yearly rent charge, or sum of —— pounds, and all arrears thereof, or so much thereof as shall be then remaining due and unpaid, and all costs, charges, and expenses whatsoever sustained or occasioned by the non-payment thereof. AND TO THIS FURTHER USE (*h*), intent, and purpose, that if the said annuity, yearly rent charge, or sum of —— pounds, or any part thereof, should be behind and unpaid by the space of twenty-eight days next over or after any of the said days or times appointed for the payment thereof as aforesaid, then and in such case, and as often as it shall so happen, although no formal demand thereof be made, it shall and may be lawful to and for the said [*grantee*], his executors, administrators, and assigns, into and upon the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, or into or upon any of them, or any part thereof, in the name of the whole, to enter; and the same to have, hold, and enjoy, and the rents, issues, and profits thereof, and of every part thereof, to receive and take to and for his and their own use and benefit, until he or they shall be thereby or therewith, or otherwise, fully paid and satisfied all arrears of the said annuity, yearly rent charge, or sum of —— pounds, and also so much of the said annuity, yearly rent charge, or sum of —— pounds as shall accrue and grow due during such time as the said [*grantee*], his executors, administrators, and assigns, shall continue in possession of the said several messuages, tenements, lands, hereditaments, and premises, after such entries as afore-

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

Power of entry by way of use.

(*h*) *Vide ante*, p. 626.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

said; together with all such losses, costs, charges, damages, and expenses whatsoever as shall be sustained or occasioned by reason or means of the non-payment thereof, or of any part thereof, at or on the days appointed for the payment thereof as aforesaid: and such possession when taken, to be without impeachment of waste (*i*). AND *as to, for, and concerning* the said several messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned and hereby appointed, granted, and released, or intended so to be, subject to the said annuity, yearly rent charge, or sum of —— pounds, and the powers and remedies hereby given and limited for securing and enforcing the payment thereof; TO THE USE of the said [*trustee for sale, &c.*], his heirs and assigns for ever, UPON THE TRUSTS, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinafter mentioned, expressed, and declared, of and concerning the same; that is to say, UPON TRUST to permit and suffer the said [*grantor*], his heirs and assigns, to receive and take the rents, issues, and profits thereof to and for his and their own use and benefit, until some default shall happen to be made of and in payment of the said annuity, yearly rent charge, or sum of —— pounds, or some part thereof, at or on the days or times, and in the manner limited and appointed for the payment thereof as aforesaid. AND ALSO UPON FURTHER TRUST, that in case the said annuity, yearly rent charge, or sum of —— pounds, or any part thereof, should happen to be behind or unpaid by the space of sixty days next over or after any of the said days or times of payment thereof, or whereon the same is hereinbefore limited and appointed, and ought to be paid as aforesaid; then and in such case, and whenever the same shall happen, it shall and may be lawful to and for the said [*trustee for sale, &c.*], his heirs, or assigns, and he and they are hereby fully authorized and empowered, to sell and absolutely to dispose of the said several messuages, tenements, lands, hereditaments, and premises hereinbefore mentioned, and hereby appointed, granted, and released, or intended so to be, either together

And subject to annuity to the use of trustee for sale, upon the trusts, &c. after mentioned; viz.

Upon trust to permit grantor to receive rents until default in paying annuity.

And on default in paying annuity by sixty days, to sell;

(*i*) *Vide ante*, p. 628.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

or in parcels, and either by public sale or private contract, or partly by public sale, and partly by private contract, to any person or persons whomsoever, for the most money or best price or prices that can be reasonably had or gotten for the same, subject to the said annuity, yearly rent charge, or sum of —— pounds; *And* to execute all such deeds, conveyances, and assurances of the said hereditaments, and premises to the purchaser or purchasers thereof, as shall be requisite or necessary for the completion of such sale or sales; *And* to stand and be possessed of and interested in all and every the sums and sum of money to arise and be produced from the sale or sales hereinbefore directed to be made, and of the rents, issues, and profits of the said hereditaments and premises, to arise and become payable after the same hereditaments and premises shall become saleable, until the sale or sales thereof shall be completed; UPON TRUST thereout in the first place to retain and reimburse to and for himself and themselves, all such costs, charges, and expenses as he or they shall or may sustain, expend, or be put unto, in or about the making and completing of such sale or sales, or otherwise in the execution of the trusts hereby reposed in him and them: *And* as to the surplus of the money arising from the sale of the said hereditaments and premises hereinbefore released, after payment of the said costs, charges, and expenses; UPON TRUST, by and out of the same surplus to pay to the said [*grantee*], his executors, administrators, and assigns, so much of the said annuity, yearly rent charge, or sum of —— pounds, as at the time of completing such sale or sales shall happen to be in arrear and unpaid; and also all such sums of money, losses, costs, charges, damages, and expenses, if any, as the said [*grantee*], his executors, administrators or assigns, or any of them, shall pay, sustain, expend, or be put unto, for or by reason or means of the non-payment of the said annuity, yearly rent charge, or sum of —— pounds, or any part thereof, at or on the days and times, and in the manner hereinbefore mentioned or appointed for payment thereof, or otherwise howsoever relating thereto. AND UPON FURTHER TRUST to place out and invest the residue of the money to arise by such sale or sales, and of the rents, profits, and produce of the said several messuages,

and to be possessed of the money arising therefrom;

upon trust to retain expenses.

And as to the surplus.

Upon trust to pay arrears of annuity due, and all costs, &c.

And to invest residue upon govenment security.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

tenements, lands, hereditaments, and premises, until such sale or sales shall be completed, upon government security at interest, in the name or names of him the said [*trustee for sale, &c.*], his executors, administrators, or assigns. AND *it is hereby declared and agreed* by and between the said parties to these presents, that the said [*trustee for sale, &c.*], his executors, administrators, and assigns, shall stand possessed of and interested in the monies so to be placed out and invested; UPON TRUST, by and out of the dividends and yearly proceeds thereof, and if such yearly interest, dividends, and proceeds should be insufficient, then in addition thereto, by calling in and disposing from time to time of a sufficient part of the principal money so to be invested, or the stocks, funds, or securities for the same, to pay unto the said [*grantee*], his executors, administrators, or assigns, the said annuity, yearly rent charge, or sum of —— pounds, as and when the same shall grow due and become payable, or so much thereof as shall from time to time be in arrear and unpaid: AND ALSO UPON TRUST, by and out of the money so to be placed out or invested, and the dividends, interest, and yearly proceeds thereof, to retain and reimburse to and for him the said [*trustee for sale, &c.*], his executors, administrators, and assigns, all such costs, charges, and expenses as he or they may sustain or be put unto in the execution of the trusts hereby reposed in him and them, respecting the money hereinbefore directed to be invested or placed out at interest; *And* subject to the trusts hereinbefore declared concerning the money so to be invested or placed out at interest as hereinbefore mentioned, the same and the interest thereof, or so much thereof and of the interest thereof, as shall not be applied in answering such several trusts as are herinbefore thereof declared, shall be IN TRUST for the said [*grantor*], his executors, administrators, and assigns, to and for his and their own absolute use and benefit. PROVIDED ALWAYS, *and it is hereby declared and agreed* by and between the said parties to these presents, that after the decease of the survivor of them the said [*three nominees*], and full payment of the said annuity, yearly rent charge, or sum of —— pounds, and of such proportional part thereof, and of all costs, charges,

Upon trust out of interest, or, if insufficient, out of principal, to pay annuity.

And to retain costs, &c.

And subject thereto;

in trust for grantor, his executors, &c.

After decease of nominees, and payment of arrears, premises not disposed of to be in

damages, and expenses as aforesaid, the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, or so much thereof, if any, as shall not be disposed of under or in pursuance of the trusts hereinbefore declared or expressed, shall be IN TRUST for the said [*grantor*], his heirs and assigns for ever, and be conveyed as he or they shall direct or appoint. PROVIDED ALSO, *and it is hereby further declared and agreed*, by and between the said parties, that all such contracts, agreements, sales, dispositions, conveyances, assurances, acts, deeds, matters and things, as shall be entered into, made, done, or executed by the said [*trustee for sale, &c.*], his heirs or assigns, of or concerning the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part or parts thereof, shall to all intents, constructions, and purposes whatsoever, be as valid and effectual in the law, although the said [*grantor*], his heirs or assigns, should not execute the same, or join therein, or assent thereto (*k*), as such contracts, covenants, agreements, conveyances, assurances, dispositions, acts, deeds, matters, and things would be, if the said [*grantor*], his heirs and assigns, had duly executed the same, and joined therein or assented thereto: [*And* that the person or persons to whom the said [*trustee for sale*, &c.], his heirs or assigns, shall convey or otherwise dispose of the several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part or parts thereof, shall, notwithstanding the said [*grantor*], his heirs or assigns should not execute the same, or join therein, or assent thereto, be entitled to have, hold, and enjoy the same several messuages, tenements, lands, hereditaments, and premises against the said [*grantor*], his heirs and assigns, and all other persons whomsoever claiming or to claim by, from, through, under, or in trust for him, them, or any of them:] *And* that the receipt or receipts of the said [*trustee for sale*, &c.], his heirs and assigns, shall from time to time be a good and

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

trust for grantor.

Sales to be valid, without grantor's joining therein.

Receipts of trustee to be sufficient discharges to purchasers.

(*k*) *Vide ante*, p. 569, n. (*e*).

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

sufficient discharge, or good and sufficient discharges, to the purchaser or purchasers of the said several messuages, tenements, lands, hereditaments, and premises, so to be sold as aforesaid, or any part or parts thereof, and to his, her, or their respective heirs, executors, administrators, and assigns, for so much of the purchase money as shall therein be acknowledged to be or to have been received; *And* that such purchaser or purchasers, his, her, or their heirs, executors, or administrators, shall not afterwards be answerable or accountable for any loss, misapplication, or non-application of such purchase money so to be received, or any part thereof, nor be obliged to inquire into the reason of making such sale or sales. PROVIDED ALSO, *and it is hereby further declared and agreed,* by and between the parties to these presents, that the said [*trustee for sale*, &c.], his heirs, executors, administrators or assigns, shall not be charged or chargeable with or for any sum or sums of money other than such as shall actually and respectively come to his and their hands by virtue of these presents; nor with or for any loss or damage which may happen in or about the execution of all or any of the trusts aforesaid, without his or their wilful default. AND THE SAID [*grantor*], for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said [*grantee*], his executors, administrators, and assigns, that he the said [*grantor*], his heirs, executors, or administrators, shall and will well and truly pay or cause to be paid unto the said [*grantee*], his executors, administrators, or assigns, for and during (*l*) the natural lives of the said [*three nominees*], and the lives and life of the survivors and survivor of them, the said annuity, yearly rent charge, or sum of —— pounds, and such proportional part thereof as aforesaid, free from taxes, and clear of all other deductions whatsoever, at the days and times, and in manner and form ex-

Trustee not to be accountable for involuntary loss.

Covenant to pay annuity.

(*l*) If it be for years determinable on lives, say—

FOR YEARS, DETERMINABLE ON LIVES.

" for and during the term of ninety-nine years, if the said [*three nominees*], any, or either of them, should so long live, the said annuity, &c." *ut supra.*

pressed, limited, and appointed for payment thereof, in and by the said in part recited bond or obligation. AND THE SAID [*trustee to prevent dower*], doth hereby for himself, his heirs, executors, and administrators, covenant and declare with and to the said [*trustee for sale, &c.*], his heirs and assigns, that he the said [*trustee to prevent dower*], hath not at any time heretofore made, done, executed, committed, or knowingly suffered, or been privy to any act, deed, matter, or thing whatsoever, whereby or by reason or means whereof the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part thereof, are, is, can, shall, or may be conveyed, impeached, charged, or in anywise incumbered. AND THE SAID [*grantor*] for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with and to the said [*trustee for sale, &c.*], his heirs and assigns, by these presents in manner following, that is to say; that (notwithstanding any act, deed, matter, or thing whatsoever, made, done, or committed, or knowingly or willingly suffered to the contrary) they the said [*grantor*] and [*trustee to prevent dower*], now have in themselves, or one of them hath in himself, good right, full power, and lawful and absolute authority by these presents to direct, limit and appoint, grant, release and convey, or otherwise assure the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and in manner and form aforesaid, according to the true intent and meaning of these presents: AND that all and singular the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, shall and may, from time to time, and at all times hereafter, remain, continue, and be to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements hereinbefore limited, expressed, declared, and contained of and concerning the same; AND shall

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

Covenant by trustee to prevent dower, that he has not incumbered.

Covenant by grantor, that he and trustee have good right to convey in fee;

that premises shall remain to uses, &c. hereby declared;

for quiet enjoyment.

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

and may be accordingly peaceably had, held, and enjoyed, without any lawful let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever, of or by him the said [*grantor*] or his heirs, or by any other person or persons whomsoever.

free from incumbrances;

And free and clear, and freely and clearly acquitted, exonerated, and discharged, or otherwise, by him the said [*grantor*], his heirs, executors, or administrators, well and sufficiently saved, defended, kept harmless, and indemnified of, from, and against all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, right and title of dower, uses, trusts, wills, intails, rents and arrears of rent, statutes, recognizances, judgments, extents, executions, estates, titles, charges, and incumbrances whatsoever, had, made, done, committed, or suffered by the said [*grantor*], his heirs or assigns, or by any other person or persons whomsoever:

for further assurance;

And moreover, that he the said [*grantor*] and his heirs, and all and every other person or persons whomsoever, having, or lawfully or equitably claiming, or who shall or may hereafter have, or lawfully or equitably claim any estate, right, title, trust, or interest in, to, or out of the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or any part thereof, shall and will from time to time, and at all times hereafter, upon every reasonable request of the said [*trustee for sale, &c.*], his heirs or assigns; but at the proper costs and charges in the law of the said [*grantor*], his heirs or assigns; make, do, acknowledge, levy, suffer, and execute; or cause or procure to be made, done, acknowledged, levied, suffered and executed, all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for further, better, more perfectly, absolutely, or satisfactorily directing, limiting and appointing, conveying, assuring, and confirming the said several messuages, tenements, lands, hereditaments, and premises hereby appointed, granted, and released, or intended so to be, and every of them, and every part and parcel thereof, with their and every of their appurtenances, to the uses, upon the trusts, and to and for the intents and purposes, and with, under, and subject to

the powers, provisoes, declarations, and agreements, hereinbefore mentioned, expressed, and declared of and concerning the same, or such of them as shall then remain to be performed, and capable of taking effect; be the same by fine, feoffment, common recovery or recoveries, or other matter of record, or not of record, or otherwise howsoever, As by the said [*trustee for sale, &c.*], his heirs or assigns, or any of them, or his, their, or any of their counsel learned in the law, shall or may be lawfully and reasonably advised, devised, or required: AND FURTHER, that he the said [*grantor*], his heirs and assigns, shall and will join and concur in the making of any sale or sales to be made, or proposed to be made by the said [*trustee for sale, &c.*], his heirs or assigns, under or by virtue of the trusts hereinbefore mentioned; and in executing the several conveyances and assurances of the said hereditaments and premises to the purchaser or purchasers thereof; and enter into all usual covenants with such purchaser or purchasers, his, her, or their heirs, executors, administrators, and assigns, for the estate, title, possession, and further assurance of the said hereditaments and premises, or such of them as shall be so sold, or do any other act or acts for confirming such sale or sales; *Nevertheless* (*m*) *it is hereby agreed and declared,* that the joining of the said [*grantor*], his heirs or assigns, in any such sale or sales, conveyance or conveyances as aforesaid, shall not in anywise be deemed or considered as essential or necessary to perfect the title of the purchaser or purchasers of the said hereditaments and premises, or any part thereof; the same being intended only for the further satisfaction of such purchaser or purchasers (*n*). (*Add defeazance on the judgment, ut ante,* p. 557 (*o*); *and *power to re-*

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

and that grantor will join in conveyances to purchasers,

but such concurrence not to be essential.

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(*m*) *Vide ante,* p. 569, n. (*e*)

(*n*) If there be an attendant term, according to the present practice it should be assigned by a separate deed.

ATTENDANT TERM.

(*o*) If it be for years determinable on lives, say—

FOR YEARS, DETERMINABLE ON LIVES.

" for and during the term of ninety-nine years, if the said [*three nominees*], any or either of them, should so long live, at the several days and times, &c." *ut ante,* p. 557; *varying it as the circumstances of the case require.*

GRANT BY APPOINTMENT, AND RELEASE TO USES; TRUSTS FOR SALE, &c.

purchase, ut ante, p. 559; *substituting in this instance, at the bottom of page* 560,) AND then and in such case the said [*trustee for sale,* &c.], his heirs or assigns, shall and will, at the request, costs, and charges of the said [*grantor*], his heirs or assigns, reconvey or otherwise assure the said several messuages, tenements, lands, hereditaments, and premises, hereby appointed, granted, and released, or intended so to be, or so much thereof as shall not have been sold and disposed of under the trusts hereinbefore declared, unto and to the use of the said [*grantor*], his heirs and assigns; or as he or they shall direct or appoint; *And* then also and in that case, if the same hereditaments and premises, or any part thereof, should have been sold and disposed of, and the produce thereof invested upon government securities at interest, the said [*trustee for sale, &c.*], his executors, administrators or assigns, shall and will transfer such government securities as may then remain unapplied and undisposed of for the purposes aforesaid, unto the said [*grantor*], his executors, administrators, or assigns; any thing herein contained to the contrary thereof in anywise notwithstanding. IN WITNESS, &c.

On repurchasing annuity, trustee to reconvey premises not sold; and any sold, to transfer securities.

END OF THE FIRST VOLUME.

Rock 1:79
SL

Rec'd. 4.10.68
D/N875